

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 00-3837 (JKF)
OWENS CORNING, et al., .
Debtors, . USX Tower - 54th Floor
600 Grant Street
Pittsburgh, PA 15219
September 18, 2006
8:44 a.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

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I N D E X

EXHIBITS:

EVID.

Declaration of Michael Thaman	28
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1 THE COURT: Please be seated. This is the matter of
2 Owens Corning, Bankruptcy Number 00-3837. This is the time set
3 for the hearing on the plan confirmation.

4 The participants by phone are Stuart Kovensky, Joseph
5 Krigsfeld, Christine Daley, Sharon Zieg, Donald Workman, Peg
6 Brickley, Andy Chang, Tracy Essig, Gordon Harriss, Naomi
7 Decter, Lydia Chan, Jennifer Lowney, John Christy, James Gibb,
8 Kate Stickles, Noel Burnham, Wei Wang, Stephen Vogel, Christine
9 Jagde, John Greene, Rebecca Butcher, Janet Ohnemus, Selma
10 Windorfer, Linda Hoch, Anne Myers, David Baldwin, John Shaffer,
11 Isaac Pachulski, William Sudell, Myron Manternach, Jennifer
12 Hoagland, Marc Casarino, Joseph Gibbons, Lisa Epps, Marti
13 Murray, Blake Huynh, Francis Monaco, Eitan Melamed, Sara Gooch,
14 Anna Engh, Katharine, Mayer, Robert Gilbert, Douglas Gooding,
15 Alice Eaton, Teresa Currier, David Klauder, Daniel Chandra,
16 Christopher Loizides, Neal Shah, Hadley Van Vactor, Domenic
17 Pacitti, Denise Wildes, Christena Lambriankos and I believe
18 Steven Felsenthal. Is there anyone present whose name I did
19 not call by phone, please? Is the court call operator there,
20 please?

21 UNIDENTIFIED FEMALE SPEAKER: I am.

22 THE COURT: Hi. I'm sorry, we're getting some kind
23 of feedback in the courtroom. It's not terrible, but there is
24 some. If it's possible to check to see where it's coming from?

25 UNIDENTIFIED FEMALE SPEAKER: I am, thank you.

1 THE COURT: Okay. Take entries in court, good
2 morning.

3 MR. PERNICK: Good morning, Your Honor, Norman
4 Pernick on behalf the Debtors Owens Corning.

5 MR. CONLAN: Your Honor, James Conlan, Sidley Austin
6 on behalf of the Debtors.

7 UNIDENTIFIED FEMALE SPEAKER: Everybody make sure
8 they use a microphone, please.

9 THE COURT: Pardon me. I think you're going to have
10 to mute this until people speak because we're getting feedback
11 on the phone.

12 MR. CONLAN: Let me repeat, James Conlan from Sidley
13 on behalf of the Debtors.

14 MR. STEEN: Good morning, Your Honor, Jeffrey Steen,
15 Sidley Austin on behalf of the Debtors.

16 MR. MONK: Good morning, Your Honor, Charles Monk,
17 Saul Ewing on behalf of the Debtors.

18 MR. PATTON: Good morning, Your Honor, Jim Patton
19 from Young Conaway on behalf of the Futures Rep.

20 MR. LOCKWOOD: Good morning, Your Honor, Peter
21 Lockwood from Caplin & Drysdale on behalf of the ACC.

22 MR. INSELBUCH: Good morning, Elihu Inselbuch from
23 Caplin & Drysdale, for the Asbestos Creditors Committee.

24 MR. KRESS: Good morning, Your Honor --

25 THE COURT: Do not talk.

1 MR. KRESS: Andrew Kress with Kaye Scholer, counsel
2 for the Futures Representative.

3 MR. RAHL: Good morning, Your Honor, Andrew Rahl,
4 Anderson Kill & Olick for the Bondholders and Trade Creditors.

5 MR. McCLAMMY: Good morning, James McClammy from
6 Davis, Polk & Wardwell on behalf of the Official Committee of
7 Unsecured Creditors.

8 THE COURT: I'm sorry, can you -- I don't think we
9 picked your name up, if you could start again, please.

10 MR. McCLAMMY: Sure. James McClammy from David, Polk
11 and Wardwell on behalf of the Official Committee of Unsecured
12 Creditors.

13 THE COURT: Thank you.

14 MR. PASQUALE: Good morning, Your Honor, Ken Pasquale
15 from Stroock for the Ad Hoc Bondholder Committee.

16 MR. GRAY: Your Honor, good morning, Tony Gray,
17 Brown, Rudnick, Berlack, Israels for an Ad Hoc Committee of
18 Preferred and Equity Security Holders.

19 MR. MARCUS: Good morning, Your Honor, Christopher
20 Marcus from Weil, Gotshal and Manges, I'm also here with Martin
21 Bienenstock from Weil, Gotshal and Manges. We are both here on
22 behalf of Credit Suisse.

23 MR. CHRISTIAN: Good morning, Your Honor, David
24 Christian of Seyfarth Shaw LLP on behalf of Continental
25 Casualty Company.

1 MR. GADSDEN: Good morning, Your Honor, James
2 Gadsden, Carter, Ledyard & Milburn LLP, on behalf of the Bank
3 of New York as Indentured Trustee.

4 MR. MILTON: Good morning, Your Honor, Jeffrey Milton
5 of Milbank, Tweed, Hadley & McCloy on behalf of Goldman &
6 Sachs.

7 MR. SHAFFER: Good morning, Your Honor, John Shaffer
8 of Stutman, Treister & Glatt, on behalf of Kensington &
9 Springfield.

10 MR. THOMPSON: Good morning, Your Honor, Mark
11 Thompson from Simpson Thacher on behalf of J.P. Morgan
12 Securities and J.P. Morgan Chase Bank.

13 MR. REGAN: Good morning, Your Honor, William Regan
14 from Simpson Thacher on behalf of Travelers.

15 MS. HOGAN: Good morning, Mary Beth Hogan, Debevoise
16 and Plimpton for the Debtors.

17 MR. KATINSKY: Good morning, Your Honor, David
18 Katinsky with the United States Department of Justice on behalf
19 of the Internal Revenue Service.

20 THE COURT: Anyone else? Okay. Mr. Pernick?

21 MR. PERNICK: Good morning, Your Honor. One
22 housekeeping matter if I might. I understand that there are a
23 number of people who have asked to appear telephonically as the
24 Court has gone through the list and I think Mr. Shaffer is here
25 for one of the objectors, but there may be another objector

1 who's on the phone and I understand the Court may have a view
2 about whether this calls list -- and I just want to see how the
3 Court would like to proceed on that.

4 THE COURT: Are these pro se people?

5 MR. PERNICK: There may be some pro se on the phone,
6 also, and also I believe one of the objectors is on the phone,
7 or their counsel, Mr. Bodnar.

8 THE COURT: Is someone on the phone representing an
9 objecting party who is not present in the courtroom?

10 MR. MYERS: Your Honor, this is Ann Myers of Marks
11 O'Neill, I represent Zurich International Bermuda. I am
12 listening on this line but my partner David Helwig is in the
13 courtroom and present as well.

14 THE COURT: Okay, thank you.

15 MR. PERNICK: And, I don't know if there are others
16 like Zurich, where the objections are resolved and we may need
17 them to just confirm on the record.

18 THE COURT: That's fine. If all they're doing is
19 confirming, I just -- in the plan confirmation process with the
20 give and take, it's a little difficult to have active
21 participation by phone, but to the extent that you're just
22 confirming that an objection is withdrawn or entering an
23 appearance, that's fine. And to the extent that there are pro
24 se people involved, I indicated that they had permission to
25 appear by phone.

1 MR. PERNICK: Thank you, Your Honor. Your Honor, we
2 are here after almost six years of working our way through, as
3 the Court is well aware, many difficult and challenging issues
4 and we're here on the confirmation of the sixth amended plan as
5 modified and that embodies a global settlement achieved with
6 all of the major constituents in this case. It's consistent
7 with the settlement term sheet which was filed on May 10th.
8 The voting results, and we have a slide to put up for the
9 Court, further demonstrates that the plan does, indeed, achieve
10 what the company has long been saying was its goal in this
11 case, which is a fully consensual plan and as the Court saw
12 from the voting declarations that were filed and the summary
13 that's just up on the board for visual purposes, there's
14 overwhelming support from all classes that were entitled to
15 vote and there's acceptance by each and every voting class at
16 OCD and the subsidiary Debtors.

17 We've resolved 17 of the 19 objections including
18 those relating to the U.S. Trustee and the IRS as well as
19 others and we've presented charts to the Court which we will
20 use as a visual aid when we get to that section of the hearing.

21 Now, typically, Your Honor, we would go through the
22 background of OC's business and asbestos liability. I'm not
23 sure that the Court believes that's necessary, or wants it.

24 THE COURT: I don't think that's necessary. Thank
25 you.

1 MR. PERNICK: I wanted to at least make the offer.

2 THE COURT: I will accept the disclosure statement
3 information and the more limited information that's in the plan
4 as the nature of that background. No one has objected to it
5 and I think that's sufficient.

6 MR. PERNICK: Thank you, Your Honor. There are a
7 couple of highlights that are important to the confirmation of
8 the plan and just for the Court's understanding, Mr. Conlan and
9 I actually have divided the hearing up and we're both going to
10 stand up here today, just to make it easier because we're going
11 to switch off parts of the hearing.

12 THE COURT: All right. Or you can both be seated,
13 whatever you're more comfortable doing. As long as you speak
14 into a microphone so we can pick you up on this system, that's
15 fine.

16 MR. PERNICK: Thank you.

17 MR. CONLAN: Good morning, Your Honor, James Conlan
18 from Sidley, on behalf of the Debtors as I mentioned earlier.

19 Your Honor, I'm just going to go through some of the
20 key facts that you'll be thinking about today in the
21 confirmation of this plan. As you know, these cases involve
22 significant litigation and I'm not going to go through all of
23 it, but there's no question that the asbestos estimation
24 litigation was a key feature and there's no question that the
25 substantive consolidation litigation was another key feature,

1 and those two rulings set the stage for the negotiation and the
2 filing of the fifth amended plan. We're here on the sixth.
3 But first I want to talk about the fifth amended plan.

4 The fifth amended plan was a plan that was supported
5 by the Asbestos Creditors Committee and the Futures
6 Representative, as well as the banks, and I want to be clear
7 with the Court and the Court knows this, we had to have the
8 support of Asbestos, we had to have support of the banks, we
9 wanted the support of the bondholders and other creditors. We
10 believe that filing a plan that we hoped would garner their
11 support, but that could be confirmed over their objection was
12 the way to get to the sixth amended plan and it worked.

13 The sixth amended plan embodies the global settlement
14 that you're well aware of. The Debtors continued to negotiate
15 after the fifth amended plan was filed again with the goal of
16 achieving a fully consensual plan. We succeeded and announced
17 it to the Court on May 10th, with the help of a lot of other
18 people, the Asbestos Creditors Committee, the Bondholders, the
19 banks, others. The sixth amended plan, I won't go through the
20 details of it, but it embodies, at this juncture, it embodies
21 the deal with the banks that Your Honor has heard a lot about
22 in context of the unimpairment and full payment determination.
23 It embodies the deal with the Bondholders and it embodies the
24 deal with Asbestos.

25 We've also been before you recently for additional

1 Court approvals that relate to this plan and just to remind the
2 Court, we have an equity commitment agreement with J.P. Morgan,
3 the Court authorized the execution and implementation on June
4 29th, of the JPM commitment, through October 31st. We're going
5 to come back to that date. Under that equity commitment
6 agreement J.P. Morgan was obligated to purchase up to 72.9
7 million shares of reorganized Owens Corning at \$30 per share
8 and they received a hundred million dollar fee for that, what
9 we call backstop commitment. You're going to hear more about
10 that. J.P. Morgan entered into a syndication agreement with
11 D.E. Shaw, a big bondholder, Plainfield and others, which we
12 frequently refer to as the backstop providers because they were
13 part of vitally important equity commitment agreement.

14 Second feature. The Debtors conducted a rights
15 offering. We sought to raise \$2.187 billion dollars in that
16 rights offering and we did it in connection with the
17 solicitation of votes on this plan, the sixth amended plan.
18 Essentially, shares of reorganized Owens Corning at \$30 a share
19 were offered to the Bondholders, Class A5 and unsecured
20 creditors in Classes A6A and A6B. Of the 72.9 million shares
21 offered, only 2.9 million were taken up as part of that rights
22 offering and as a result JPM is obligated to purchase the
23 remaining 70 million shares at \$30 per share. And that's very
24 important to the success of this process.

25 Finally, and we've been before the Court on this as

1 well. We have an exit financing commitment with CitiGroup and
2 Bank of America. It was approved by you on July 20th. It
3 consists of a \$1.4 billion dollar term loan and a \$1 billion
4 dollar revolver. It also provides, our financing provides for
5 potential issuance of up to 400 million in senior notes, which
6 will be used to reduce the term facility, I want to be clear.
7 We have 1.8 billion in total debt that would be authorized
8 under the exit financing. So, in other words, it's not as
9 simple as taking the term and adding the revolver and adding
10 the 400, it's subject to a 1.8 cap.

11 Finally, the disclosure statement and plan
12 solicitation as you know, you approved the procedures order,
13 the solicitation procedures order on June 19th, the order
14 approving the rights offering, procedures and related materials
15 was entered on July 10th. The disclosure statement was
16 approved on July 10th. Briefly, the overview of the plan.

17 It is fully consistent with the Third Circuit's
18 substantive consolidation ruling, creditors of particular
19 debtors have claims against that debtor, this plan recognizes
20 that in every respect. The treatment of creditors and, again,
21 I'll be brief. Unclassified, priority secured claims against
22 all Debtors paid in full. Convenience claims and general
23 unsecured claims against all Debtors other than OCD, the
24 company at the top, paid in full, with post petition interest.
25 At OCD, the top of the organizational chart today,

1 distributions are precisely as was agreed in that term sheet
2 that you heard about before. The banks, Class A4 received the
3 deal that we negotiated with them, and that is described, and
4 you've heard much about it, I won't go on, in connection with
5 the full payment and unimpairment determination. The
6 bondholders, Class A5, receive stock. The unsecured creditor
7 classes, A6A and A6B, receive cash payments, rather than stock,
8 but the same value distribution using a \$30 per share value.
9 Asbestos PI claims receive, this is against OCD, receive 1.25
10 billion in cash, certain asbestos specific assets, primarily
11 insurance and insurance related assets, plus if no fair act,
12 they will collect on a contingent note in the amount of \$1.39
13 billion dollars. And, they will receive 28.2 million shares of
14 reorganized Owens Corning.

15 Finally, Your Honor, subordinated claims in Class A11
16 as well as existing stockholders received warrants. A couple
17 more features. To state the obvious and as has been the
18 intention from the very beginning of this case, the plan
19 contains a 524(g) trust and that 524(g) trust will take onto
20 itself both the OCD claims and the Fiberboard claims. The
21 settlement, and this is the last thing I'll say about it,
22 includes a resolution of the estimation appeal that had been
23 pending, it is dismissed as part of this.

24 As Mr. Pernick mentioned, we had 19 objections in
25 total, 17 have been resolved, the remaining two are what we

1 call Kensington as well as Ackerman. Mr. Pernick.

2 MR. PERNICK: Your Honor, we filed four sets of
3 modifications to the plan and/or the schedules and exhibits and
4 the main one as the Court knows, was filed on August 17th, that
5 was the plan supplement and many of the schedules and exhibits
6 were actually filed on that date. That was, for the record,
7 two weeks before the voting deadline, it was orchestrated by
8 the Debtors and the Court so that there was enough time for
9 people to review that and have it affect their vote if they
10 needed it to. The rest are under the category we think of
11 technical changes or clarifications that do not materially or
12 adversely affect the treatment of any claim or interest. We
13 did file a conformed copy of the plan and all schedules and
14 exhibits on September 15th, on Friday. That cumulatively
15 incorporates and highlights all of the modifications since July
16 10th. So, out of an abundance of caution, we wanted there to
17 be one document for the Court and for all parties in interest
18 to review, to see what all of the changes are.

19 And, again, I'm happy to go through those but I think
20 the Court has reviewed those and unless the Court has questions
21 about any particular modifications, I don't want to take up the
22 Court's time going through each one of them.

23 THE COURT: I don't have any questions of the
24 modifications, you were kind enough to send me duplicate sets
25 of all of these pleadings to the office and at home, so pretty

1 much my life for the last couple days has been reading, so I
2 understand the information that's here.

3 MR. PERNICK: Thank you, Your Honor. Your Honor,
4 with respect to the affirmative case form confirmation, again,
5 I'd be happy to discuss each of the 1129 elements. I'm not
6 sure what the Court's pleasure is.

7 THE COURT: Mr. Pernick, I think it's really up to
8 you to make your record. I don't understand that any of the
9 objections deal with the 1129 standards exactly. I think what
10 may make most sense is to see whether we can address the
11 objections and then find out whether there is anything left
12 that needs to be addressed, but if you have a different
13 presentation, that's fine. However you want to proceed is okay
14 with me.

15 MR. PERNICK: I think we're okay, Your Honor. I
16 don't believe either of the objections that are still
17 outstanding deal with the 1129, if they do, we can come back to
18 them and for the record, as the Court is aware and I think
19 everybody else, we did file a detailed brief in support of
20 confirmation which lays all the arguments out and cites to all
21 the support that we have in the different declarations and
22 other pieces of evidence.

23 THE COURT: Yes.

24 MR. PERNICK: There is one part of 1129 that I would
25 like to deal with, just to highlight it for the Court. We

1 actually have a cram down situation with one class in the case,
2 it's Class A12B, and we believe that the cram down requirements
3 are satisfied here. The plan in that respect does not
4 discriminate unfairly in our view and is fair and equitable as
5 to that A12B.

6 A12B, just for the Court's information is deemed to
7 have rejected the plan because there are no holders that are
8 entitled to any distributions under the plan in that class.

9 Just for a little bit of background, there are two
10 classes of interest at Owens Corning. Class A12A which is
11 existing common stock and Class A12B, which are OCD interests
12 other than existing common stock. That consists of options and
13 other rights to acquire stock that are not of equal rank to the
14 A12A creditors and that's why they are in a different class.

15 The plan satisfies the absolute priority rule with
16 respect to A12B, there are no classes junior to A12B, the plan
17 does not discriminate unfairly with respect to A12B in our
18 view, because there are different legal entitlements and
19 priorities in Class A12B versus the classes ahead of them and
20 they are junior to the classes ahead, particularly A12A, no
21 senior class will receive more than payment in full and no A12B
22 holder has objected to the plan. So, I wanted to just for the
23 record point that out to the Court that we are asking for a
24 cram down with respect to one particular class.

25 THE COURT: All right. I'm not aware that anybody

1 has filed an objection to that treatment, has there been an
2 objection?

3 MR. CONLAN: No.

4 MR. PERNICK: No.

5 MR. CONLAN: Your Honor, James Conlan again. The
6 plan satisfies all the elements of Section 524(g). I won't
7 walk through them, I'll take the same approach as Mr. Pernick
8 did on the confirmation standards. All of the explanations for
9 how 524(g) is satisfied is contained in the affidavits that
10 have been filed, as well as the confirmation brief itself, if
11 that approach pleases the Court.

12 THE COURT: That's fine. As I said, whatever record
13 you wish to make, go right ahead and make, otherwise, if people
14 are -- again, I'm not aware specifically of an objection with
15 respect to 524(g) that hasn't been resolved, I believe.

16 MR. CONLAN: Your Honor, you're correct. All
17 objections have been resolved.

18 THE COURT: Let me ask whether anyone, and I guess I
19 will ask the operator, please to unmute the line for purposes
20 of people answering two questions. The first is, is there any
21 objection to the Court accepting by way of a proffer the
22 information that is contained in the Debtors brief with respect
23 to the standards governing 1129 and how this plan and
24 disclosure statement meet those standards? All right, there is
25 no objection.

1 MS. HOCH: Hello?

2 THE COURT: Yes? Hello?

3 MS. HOCH: This is Linda Hoch.

4 THE COURT: Yes.

5 MS. HOCH: And we may not have a disagreement on that
6 particular standard but we do have disagreement on different
7 parts of the plan, as it comes up sometime during the course.

8 THE COURT: The plan will not be gone over line by
9 line. If you have an objection to it that has been filed and
10 unresolved then we will at a certain pint, address those
11 objections, but what I want to do right now is find out about
12 the evidentiary support for the plan. So, I'll get back to
13 objections after I find out whether someone is asking for more
14 of a proffer other than what the Debtor is proposing, which is
15 to look at the brief with respect to the 1129 confirmation
16 standards.

17 MS. HOCH: Yes, thank you.

18 THE COURT: Okay. Anyone have an objection to using
19 the information in the Debtors brief as its proffer and the
20 affidavits, with respect to 1129 confirmation standards? All
21 right, there is no objection, so I will accept that proffer.
22 Same question with respect to 524(g) standards, does anyone
23 object to the Debtors affidavits and briefs being used as the
24 Debtors proffer in support of how the plan meets the standards
25 for 524(g) plan injunction purposes?

1 MR. INSELBUCH: Your Honor, you mentioned the Debtors
2 affidavits, I assume you also include within that the affidavit
3 of Future Reps, in support of confirmation?

4 THE COURT: Yes, I'm sorry. Actually, I do mean all
5 of the affidavits in support of confirmation, thank you. Any
6 objection? All right, there is no objection, so I will accept
7 that proffer as well, and if the operator would kindly mute the
8 line again. When we get to objections, then I'll ask you to
9 unmute it once more. Okay. If somebody is using a Blackberry,
10 please don't. It makes that feedback noise. Okay.

11 MR. PERNICK: Your Honor, I think it might be helpful
12 to actually walk the Court quickly through the declarations and
13 proffers that have been offered, just to make the record.

14 The first one is the declaration of Michael Thaman,
15 in support. He's the Chairman of the Board and Chief Financial
16 Officer of Owens Corning. He's actually in the courtroom
17 today. We did previously file that declaration as the Court
18 noted. It's at Docket Number 19188, and it's Tab O in the
19 notebook, in case anybody would like to reference it, including
20 the Court.

21 If he were called to testify he would explain that
22 historically OC -- would you prefer that I not go through them?

23 THE COURT: No.

24 MR. PERNICK: Oh, that OC has been a very successful
25 company and that he anticipates that after OC's emergence, that

1 the company will continue its strong financial performance.
2 I'm just summarizing what is in these, we're not going to,
3 obviously, come close to reading them into the record.

4 He would also testify that the company's continued
5 financial success will be based in part on a new holding
6 company structure which has been outlined in the plan which
7 will be organized with subsidiaries formed around product
8 lines. He would further testify that the financial projections
9 that were presented in connection with the plan and they were
10 for the fiscal years 2006 through 2008, were made applying
11 fresh start accounting principles and certain other adjustments
12 and that the financial projections show that the company will
13 remain healthy and continue to grow, post emergence.

14 In addition, he would testify that the company has
15 entered into an agreement to form an existing new venture, in
16 which it plans to merger its International Composite's business
17 with Sangoban's Reinforcements business. And last he would
18 testify that he believes that the company will pay its debts
19 and other obligations as they come due and that the
20 confirmation of the plan is not likely to be followed by a
21 liquidation or need for further financial reorganization. I'd
22 like to actually move Mr. Thaman's declaration into evidence,
23 with the Court's permission.

24 THE COURT: Any objection to my accepting Mr.
25 Thaman's declaration? There is no objection, it will be

1 accepted.

2 MR. PERNICK: And I didn't know whether any parties
3 wish to cross-examine Mr. Thaman.

4 THE COURT: Anyone wish to have a cross-examination
5 of Mr. Thaman, who is in the courtroom? No one is asking for
6 cross-examination.

7 MR. PERNICK: Thank you, Your Honor. Next is the
8 declaration of Stephen Krull, he is the Senior Vice President
9 and General Counsel and Secretary of Owens Corning. We
10 previously filed that declaration with the Court, Docket Number
11 19186, and it's Tab M in the notebook.

12 If he were called to testify, Mr. Krull would testify
13 about the history of the Debtors businesses, the history of the
14 Debtors asbestos liability, and the contributing factors to the
15 Debtors decision to file bankruptcy. He would testify about
16 the major obstacles facing the Debtors in their efforts to
17 reorganize, the partial resolution of those obstacles through
18 the estimation order, the substantive consolidation order, the
19 Third Circuit's reversal of the substantive consolidation
20 order, and the fifth amended plan and, ultimately, the
21 negotiations leading up to and the resolution embodied in the
22 settlement term sheet and the plan support agreement that
23 resulted in overwhelming creditor acceptance as we've detailed
24 today.

25 Mr. Krull would testify about the formulation of the

1 plan, the equity commitment agreement, the rights offering, the
2 exit financing commitment, the contemplated securities offering
3 and overall plan feasibility and, finally, he would testify
4 about the fairness of the plan, the good faith negotiations
5 surrounding the formulation of the plan, the diligence and
6 business judgment exercised during the formulation of the plan
7 and the appropriateness of certain key provisions, including
8 524(g) trust and the channeling injunction, the assumption of
9 executory contracts and unexpired leases, the assumption of
10 indemnification obligations and the release and exculpation
11 provisions. I would, again, like to move Mr. Krull's
12 declaration into evidence.

13 THE COURT: Does anyone have an objection to the
14 introduction into evidence of Mr. Krull's declaration? You
15 need to use a microphone.

16 MR. SHAFFER: Thank you. I am very loud, though.
17 Your Honor, John Shaffer, for Kensington and Springfield. We
18 don't have objection at this particular point, but it may
19 become necessary in connection with the discussion of the
20 releases and exculpations to put Mr. Krull on the stand. I'd
21 like to see if we can resolve that issue legally first, before
22 we waste the time.

23 THE COURT: All right, then I will accept the
24 declaration as substantive evidence, but preserve your ability
25 to ask questions on cross-examination to a later point in this

1 proceeding.

2 MR. SHAFFER: Thank you, Your Honor.

3 THE COURT: Does anyone else have an objection? Does
4 anyone else wish to have cross-examination of Mr. Krull? All
5 right, then I'll reserve that for Mr. Shaffer. Let me make a
6 note, please, Mr. Pernick. Okay, thank you.

7 MR. PERNICK: Next, Your Honor, is the declaration of
8 Robert Kost in support of confirmation. He is the Managing
9 Director in the restructuring group at Lazard Frere, the
10 financial and restructuring advisers to the Debtors. We
11 previously filed that declaration with the Court at Docket
12 Number 19187. If he were called to testify, Mr. Kost would
13 talk about the Debtors engagement of Lazard and his personal
14 experience working as a financial adviser to the Debtors,
15 working with the Debtors regarding the preparations of company
16 projections, the valuation of the reorganized Debtors
17 consolidated enterprise value and the valuation methodology and
18 the feasibility of the plan, including the fact that Owens
19 Corning has received a prospective investment grade rating from
20 both Moody's and Standard and Poors and in his knowledge Texaco
21 is the only other large Chapter 11 to exit Chapter 11 with an
22 investment grade rating actually at emergence.

23 Mr. Kost would also testify about the liquidation
24 analysis, independent exceed to the disclosure statement, the
25 application of that liquidation analysis to the best interests

1 of creditors tests, the Debtors total distributable value, the
2 distribution analysis in Appendix I to the disclosure
3 statement, the rights offering and employee incentive program
4 and management incentive programs. I would move Mr. Kost's
5 declaration and the related exhibits into evidence. And, I
6 don't know whether any party would like to cross-examine Mr.
7 Kost.

8 THE COURT: Does anyone have an objection to the
9 admission of the declaration of Mr. Kost? All right, there's
10 no objection. Does anyone have cross-examination for Mr. Kost?
11 There is no cross-examination, the declaration is admitted.

12 MR. PERNICK: Thank you, Your Honor, the last is the
13 declaration of Mr. McMonagle and Mr. Kress, I believe. wants to
14 speak a moment about that.

15 MR. KRESS: Good morning, Your Honor.

16 THE COURT: Good morning.

17 MR. KRESS: We would like to move into evidence the
18 declaration of James J. McMonagle, the Futures Representative
19 who was appointed by this Court to represent the interests of
20 the persons who may assert demands. The substance of the
21 declaration is that the plan complies with the provisions of
22 Section 524(g) and results in substantially equivalent
23 treatment between present claimants and persons who may assert
24 demands. The declaration was filed with this Court, it is
25 Docket Number 19173, and I would move the declaration into

1 evidence.

2 THE COURT: Does anyone object to the introduction of
3 Mr. McMonagle's declaration? There is no objection. Does
4 anyone have cross-examination for Mr. McMonagle? No one is
5 asking for cross-examination, the declaration is admitted.

6 MR. KRESS: Thank you, Your Honor.

7 THE COURT: Just a second please.

8 MR. PERNICK: Yes, Your Honor.

9 THE COURT: Okay, thank you.

10 MR. PERNICK: Your Honor, moving onto the objections,
11 I don't know if the Court would find it helpful if I went
12 through the resolved objections, to just quickly state how they
13 were resolved and --

14 THE COURT: I guess the question is whether anybody
15 has an objection to the information that's contained in your
16 chart which I think is very helpful and points to the places
17 where the plan has been amended or some other resolution has
18 taken place and so, if you want to go through them that's fine,
19 but I believe that the chart is very helpful.

20 MR. PERNICK: That's fine with me, Your Honor.

21 THE COURT: Does anyone wish to hear as to the 17
22 resolved objections any further information than the use of the
23 Debtor's chart that explains how and where those objections
24 have been resolved? What would be helpful, Mr. Pernick, is
25 perhaps for you to recite, just through the list, to make sure

1 that we can confirm on the record that either the objections
2 have been resolved by the objecting party or that they are
3 satisfied with the treatment, either or, or both?

4 MR. PERNICK: Sure, Your Honor.

5 THE COURT: All right.

6 MR. PERNICK: And, I'll just go down the chart, I
7 think that would be the easiest way.

8 THE COURT: Okay.

9 MR. PERNICK: Agenda item A on the chart is the Texas
10 Comptroller of Public Accounts.

11 THE COURT: I'm not sure who is represented, why
12 don't you state all 17 and then I'll open the line and see
13 whether anybody wishes to address those.

14 MR. PERNICK: Very well, Your Honor.

15 THE COURT: Okay.

16 MR. PERNICK: The second is Zurich International
17 Bermuda, Limited. Third is State of Ohio on behalf of the Ohio
18 Environmental Protection Agency. Fourth is the United States
19 of America on behalf of Internal Revenue Service. Next is
20 Trade Debt Net, Inc. Next is Pinal, P-i-n-a-l County, I
21 apologize if I mispronounced it. Next is County of Comal City
22 of Waco, and Las Vegas Independent School District. Next is
23 the United States Trustee. Next is Ennis City of Ennis and
24 Channel View. Next is Schultz Asset Management. The Ad Hoc
25 Committee of Preferred and Equity Security Holders. Dallas

1 County, Harris County, City of Houston, Houston Independent
2 School and McClennan Counsel. Scott & Scott Limited. Dice,
3 Inc. United States Department of Labor, Pacific Employers
4 Insurance Company and Continental Casualty Company.

5 THE COURT: Okay, please, I think the line has been
6 made live again, so let me inquire, first of anybody on the
7 phone representing any of the 17 parties just read into the
8 record by Mr. Pernick. Does anyone wish to speak at all in the
9 nature of the resolution of any of the objections filed by
10 those 17 parties?

11 MR. KLAUDER: Your Honor, this is David Klauder for
12 the United States Trustee's Office. I just have a comment when
13 you're ready.

14 THE COURT: I'm ready.

15 MR. KLAUDER: I just wanted to note we have resolved
16 our objection and we are satisfied with the amendment that has
17 been proposed to one of the portions with regard to the
18 releases. I did want to make a note because there was a lot of
19 conversations and discussions I had with the Debtors regarding
20 one section of the releases and I think this can be cleared up
21 and they had agreed to make a statement on the record with
22 regard to this. It's Section 5.16(b) of the plan which is, we
23 refer to as the third party releases. It's noted in there and
24 we thought it was clear and the Debtors made it clear, that the
25 third party releases were consensual, fully consensual meaning

1 that if you did not -- if a creditor did not specifically check
2 the box, so to speak, on the ballot and consent to the release,
3 they were not bound by it.

4 There may have been some ambiguities with some other
5 provisions in the plan. In conversations I had with counsel,
6 it was noted that that was the intention, that those were to be
7 fully consensual. I wanted to make that point on the record
8 and hope that the Debtors can confirm that.

9 THE COURT: All right. Mr. Conlan?

10 MR. CONLAN: Yes, we can confirm that, in fact, I'll
11 go a little bit further. Unless a party voted and checked the
12 box, it wouldn't apply. And, let me back up and describe 5.16
13 for a minute, (b) and that's the provision we're talking about,
14 the so called personal release or third party release section.

15 As Your Honor remembers, as part of the balloting
16 procedures that were set up, there is a box on the ballot, a
17 party has to actually vote on the plan and check the box in
18 order to keep its cause of action. If a party doesn't vote,
19 for example, at all like Kensington, then they don't give a
20 third party release. If a party votes, but checks the box,
21 they don't give a release. So it is entirely consensual.

22 THE COURT: Mr. Klauder, is that sufficient?

23 MR. KLAUDER: Your Honor, that is satisfactory for my
24 purposes and our objection is fully resolved.

25 THE COURT: All right, thank you.

1 MR. CONLAN: And, again, Your Honor, that's with
2 respect to personal causes of action, so called third party
3 releases, it doesn't apply to estate causes of action.

4 THE COURT: Yes, thank you. Anyone else on the phone
5 have any comments with respect to the objections and the
6 resolution of the objections?

7 MS. HOAGLAND: Your Honor?

8 THE COURT: Yes.

9 MS. HOAGLAND: My name is Jennifer Hoagland, I
10 represent Pacific Employers Insurance Company and other members
11 of the eight group of companies. I just wanted to state and I
12 apologize because we're not in court and can't see the chart,
13 but our objection is resolved in the proposed order confirming
14 the plan.

15 THE COURT: I'm sorry, you faded out, your objection
16 is resolved -- what?

17 MS. HOAGLAND: Oh, in the proposed order confirming
18 the plan that was submitted at Docket Number 19195.

19 THE COURT: All right, thank you. Whoever is using a
20 Blackberry, please stop. Anyone else on the phone? Oh, Mr.
21 Conlan let me -- or Mr. Pernick, I'm not sure, let me have you
22 confirm that the Pacific Insurance objection will be addressed
23 in the proposed confirmation order.

24 MR. PERNICK: Yes, Your Honor, it's in the draft that
25 we'll provide. I think we gave counsel the language, but if

1 she doesn't have it, we'll be happy to get it to her real quick
2 after the hearing.

3 THE COURT: Ms. Hoagland, as I understand it, you do
4 have that draft and you're satisfied with the language,
5 correct?

6 MS. HOAGLAND: Correct.

7 THE COURT: All right, thank you.

8 MR. PERNICK: And just to make Ms. Hoagland
9 satisfied, there are no changes to that language in the form of
10 the order that we're going to present to the Court.

11 THE COURT: All right.

12 MS. HOAGLAND: Thank you.

13 THE COURT: Anyone else on the phone who has comments
14 with respect to your objection or the resolution?

15 MR. FELSENTHAL: Judge, this is Steve Felsenthal, if
16 I could impose on the Court a minute?

17 THE COURT: Yes, sir.

18 MR. FELSENTHAL: We represent Barron & Budd, Foster &
19 Spear, Waters & Krause and Weiss and Lutzenberg. On the U.S.
20 Trustee's objection, a portion of it went to the channeling
21 injunction. It's my understand that it's been resolved but the
22 copy of the chart does not show the resolution. Could I impose
23 on the Court to ask counsel to -- resolved?

24 THE COURT: Yes, sir.

25 MR. CONLAN: It has been resolved.

1 THE COURT: He's saying that the copy of the chart
2 that he has doesn't show the resolution so he's asking what the
3 resolution is, if you could state it on the record.

4 MR. CONLAN: Yes. We walked the U.S. Trustee through
5 the reasons why the settled causes of actions, the so call NSP
6 settlements were properly channelable to the trust and after
7 our explanation the U.S. Trustee and Mr. Klauder who can speak
8 for himself, accepted that explanation.

9 THE COURT: So, there is no change to either the
10 treatment of the NSP settlements under the plan or the language
11 in the proposed confirmation order?

12 MR. CONLAN: That is correct.

13 THE COURT: Mr. Klauder, can you confirm that the
14 U.S. Trustee's Office is essentially not pursuing that
15 objection today?

16 MR. KLAUDER: Your Honor, David Klauder for the
17 United States Trustee. That's correct, it was fully resolved
18 through clarification and explanation.

19 THE COURT: Mr. Felsenthal, is that sufficient?

20 MR. FELSENTHAL: Yes, thank you very much.

21 THE COURT: Anyone else on the phone?

22 MS. MYERS: Your Honor, this is Anne Myers for Zurich
23 International Bermuda.

24 THE COURT: I'm sorry, there's a --

25 MS. MYERS: I just want to clarify that the --

1 THE COURT: Pardon me, Ms. Myers, there's --

2 MS. MYERS: -- confirmation order -- looking at today
3 was filed under Docket Number 19 --

4 THE COURT: Ms. Myers, Ms. Myers, you're on the
5 speaker phone --

6 MS. MYERS: Yes.

7 THE COURT: -- I'm sorry, we can't understand you,
8 you're going to have to pick up a handset and speak, please.

9 MS. MYERS: Your Honor, this is Anne Myers with
10 Zurich International Bermuda. I wanted to verify that the
11 confirmation order that the Court will be looking at today is
12 the one that was filed under Docket Number 19195.

13 THE COURT: Just a second please. I think there is
14 probably going to be a suggested change.

15 MR. CONLAN: There actually are some further changes,
16 but none of them deal with that objection. That language is
17 the same as was filed under that docket number.

18 THE COURT: Okay. It's irrelevant because I'm going
19 to need to take this into chambers after this is over and read
20 it anyway, so the confirmation order is not going to get
21 entered today. You will have an opportunity to see the
22 revisions and to discuss any difficulties that you see with it,
23 with counsel for the Debtors, but they're indicating, Ms.
24 Myers, that there is no change with respect to the treatment of
25 your clients claim and the settlement of your objection.

1 MS. MYERS: Thank you, Your Honor.

2 THE COURT: Anyone else on the phone with comments?

3 MR. GILBERT: Judge, this is Bob Gilbert representing
4 WCI Communities.

5 THE COURT: Yes, sir.

6 MR. GILBERT: I'm going to have a comment with
7 respect to the proposed order but it doesn't go to a claim
8 objection, so perhaps we can hold that till a little bit later,
9 unless Your Honor wants to entertain it now.

10 THE COURT: Well, you're speaking now, so go ahead.

11 MR. GILBERT: Thank you, Judge. As Your Honor will
12 recall, you approved a stipulation between WCI and Exterior
13 Systems on September 6th. Pursuant to the stipulation, certain
14 post petition claims of WCI against Exterior concerning a
15 housing development in Palm Beach County are to be preserved
16 and survive confirmation, notwithstanding any of the discharge
17 release stay or other provisions contained in the plan or the
18 order of confirmation.

19 We don't believe there's any issue between us and
20 Exterior as to the intent of the parties here, but the -- and
21 as a matter of fact, Section 5 -- I'm sorry, 7A(3) of the
22 proposed order on Page 50, that's the latest version I have,
23 Judge, speaks to WCI's claims and their preservation post
24 confirmation. In particular, the last couple lines of that
25 provision indicate that the claims are not affected by any

1 other provision of the confirmation order, including Section
2 5-2.

3 Now, Section 5-2 is this omnibus bar provision which
4 purports to bar certain claims against the Debtors and other
5 parties notwithstanding any other provision in the order.
6 There may be at least some suggestion that those two provisions
7 may be in conflict. We simply wish to bring those to the
8 Court's attention and confirm, in fact, that none of WCI's
9 claims or rights are being affected by any other provision of
10 the confirmation order, including Section 5-2 and, in
11 particular, Section 7A(3) of the confirmation order as it
12 relates to WCI's claims, will control over anything contrary
13 in Section 5-2.

14 THE COURT: I think it would be easy just to add a
15 sentence to paragraph 7A(3) that indicates that it controls
16 over any other provisions of the confirmation order or plan
17 that might be inconsistent. Is that all right with the plan
18 proponents?

19 MR. PERNICK: I think we have it there already, Your
20 Honor, but what we'll do after the hearing is, we'll go over
21 that language, but we're all on the same page, we've been
22 trying to resolve this and give Mr. Gilbert comfort and I'm
23 taking from his conversation that we're not quite there yet,
24 but the intention is exactly as he stated.

25 THE COURT: Okay. Do you have a more recent version

1 of the order than he's looking at?

2 MR. PERNICK: I have to check.

3 THE COURT: This was on Page 50. Can you -- they're
4 conferring just a second.

5 MR. PERNICK: I think Mr. Minuti from my office sent
6 this to Mr. Gilbert over the weekend, but let me just put it on
7 the record, it is Page 50. Let me start on Page, part of Page
8 49 where it says, shall survive confirmation of the plan, and
9 shall not be discharged, released, enjoined, stayed or
10 otherwise affected by 1) any terms or provisions of the plan,
11 including but not limited to Section 14.2, relating to the
12 administrative claims bar date; 2) confirmation or the
13 effective date of the plan; 3) the provisions of 11 U.S.C.
14 Section 1141, or 4) any other provision of this -- and we
15 struck the word order and added in confirmation order,
16 including but not limited to Section 5-2 above.

17 THE COURT: Well, it seems to be in there, Mr.
18 Gilbert.

19 MR. GILBERT: Judge, with Debtors' -- I'm sorry with
20 counsel's acknowledgment that that's the intended meaning,
21 we're satisfied.

22 THE COURT: All right, thank you. Anyone else on the
23 phone, who has a comment or concern? Okay. I'll ask the
24 operator to mute the line and then I'll ask the same question
25 in court. Is there anyone in court who has an issue to address

1 with respect to the resolution of your objection to
2 confirmation?

3 MR. GADSDEN: Your Honor, James Gadsden, Carter,
4 Ledyard & Milburn, LLP, for the Bank of New York. I understand
5 there's been language that's going to be -- that has been added
6 to the form of order that will be tendered to you this
7 afternoon or this morning that resolves my informal objection.

8 THE COURT: Mr. Pernick?

9 MR. PERNICK: Yes, I'm happy to read that language
10 into the record, Your Honor, if you'd like it now.

11 THE COURT: All right.

12 MR. PERNICK: This goes at the end of Section IV,
13 Roman Number IV-K, on Page 32, that starts with notwithstanding
14 anything to the contrary set forth in the plan or in this
15 confirmation order, the Debtors, subject to the agreement of
16 the Ad Hoc Committee of Preferred and Equity Security Holders,
17 and now we will insert -- and the Bank of New York, as special
18 trustee on behalf of the holders of the 6 1/2 percent
19 convertible monthly income preferred securities -- and then
20 continuing on, may take such other and additional steps.

21 THE COURT: Mr. Gadsden, is that satisfactory?

22 MR. GADSDEN: Yes, Your Honor, with the --

23 THE COURT: I'm sorry, you need to use the
24 microphone, sir.

25 MR. GADSDEN: Sorry. Yes, Your Honor.

1 THE COURT: Okay, thank you. Anyone else in the
2 courtroom who wishes to address the resolved objections to
3 confirmation? Okay, that's it, Mr. Pernick.

4 MR. PERNICK: Thank you, Your Honor. One other
5 category before we get to the two unresolved objections and
6 Your Honor probably raised an eyebrow when you saw this filing
7 but we were just out of an abundance of caution. There were a
8 number of miscellaneous correspondence and written
9 communications received by the Debtor. I knew that Your Honor
10 would smile when you saw it. We put those on Exhibit B, which
11 is we call a summary of informal submissions. They generally
12 deal with individual claim treatment, copies of notices
13 regarding the plan which were signed by the apparent recipient
14 and sent back to us, acknowledges of receipts of documents
15 and/or other correspondence and general inquiries. We don't
16 believe any of these are submissions that are objections to
17 confirmation, but we still wrote to each party who sent us one
18 of those advising them of the date and time of the confirmation
19 hearing, with instructions as to how to appear telephonically
20 at the hearing if they wished to and we would just request for
21 the record that the Court overrule all of those objections to
22 the extent they are objections to confirmation. I don't know
23 before the Court considers that request, whether any of those
24 parties are on the phone or not or in court, and I don't know
25 whether you want me to actually read those names into the

1 record.

2 THE COURT: Well, it's a pretty long list. I have
3 the -- where did I put it, the list of participants by phone,
4 I'm not sure if any of these are the pro se litigants. Let me
5 see. The list of people who signed up to appear and Ms. Hoch
6 is on the phone, Linda Hoch. There is also Selma Windorfer.
7 Those appear to be the only two pro se --

8 MS. OHNEMUS: And Janet Ohnemus.

9 THE COURT: I'm sorry?

10 MS. OHNEMUS: And Janet Ohnemus. I am a daughter of
11 Edward Windorfer, and I'm representing my mother, Selma
12 Windorfer --

13 THE COURT: Oh, yes, Ms. Ohnemus, I'm sorry, I missed
14 your name here. So, I have Janet Ohnemum, Selma Windorfer, and
15 Linda Hoch. Is there anyone else on the phone who is
16 unrepresented by counsel? Okay. Do you want to turn to these
17 three objections first, Mr. Pernick?

18 MR. PERNICK: Sure, Your Honor. Just for the record,
19 the only one that I think I saw as somebody who sent us a
20 correspondence, if I got it right, were the beneficiaries of
21 Edward Windhoffer -- or Windorfer, I apologize. I don't
22 believe the other two filed anything, but we don't have any
23 objection to the Court hearing from them at this time.

24 THE COURT: All right. Why don't we start with you,
25 Ms. Ohnemus and explain what your objection is, please.

1 MS. OHNEMUS: Well, first I'd like to respond about
2 the paperwork. I actually, and my mother did not receive any
3 of this paperwork about the court proceedings until September
4 the 13th, of 2006 and, so we were expected to call in for the
5 court call and we had these huge stacks of paperwork that I
6 tried to go through. My mother is in a nursing home, I'm her
7 power of attorney, and so, it was -- we were not able to
8 respond in a timely manner since the deadline was already
9 passed.

10 And --

11 THE COURT: I'm sorry, can the court call operator
12 please turn up this system, I'm having a great deal of
13 difficulty hearing Ms. Ohnemus. Ms. Ohnemus are you on a
14 speaker phone?

15 MS. OHNEMUS: No, I am not.

16 THE COURT: Okay. I'll see if the court call
17 operator can adjust the system for us, please.

18 MS. OHNEMUS: Thank you.

19 THE COURT: Your mother is in a nursing home and
20 you're the power of attorney, you didn't have time to file a
21 response. Why don't you tell me what your response is?

22 MS. OHNEMUS: Well, my father was as sheet metal
23 worker and worked on furnaces and wrapped duct work with the
24 asbestos. He worked with it with hie bare hands and due to
25 that, before his death he was 100 percent bedridden and he

1 couldn't say more than two words without having to stop to
2 breathe. We are poor people and we tried very hard to try to
3 continue, we had to borrow loans, I found paperwork my father
4 had to borrow over \$30,000 just to we had food to eat. We
5 didn't go on public aid. We didn't file bankruptcy, so we
6 wouldn't have to pay our bills like OC has and my sister and my
7 mother have for years done lots of work on trying to come to
8 some settlement to say that my father's life has some value and
9 our grandchildren didn't have a chance to spend time with their
10 grandfather, three of them were born after his death and he
11 suffered so horribly. I even had to try to do CPR on my father
12 to try to bring him back and even to this day it's just -- it's
13 really difficult. I'm sorry.

14 THE COURT: That's all right. Why don't you just
15 take a minute.

16 MS. OHNEMUS: And my sister, Linda Hoch, has worked
17 extensively and corresponded with Owens Corning. We filed a
18 bankruptcy long before they went into -- we filed, not a
19 bankruptcy, we filed a case before they went into bankruptcy,
20 and we -- they just never told my father of all the problems
21 with asbestos. They perpetuated the conspiracy of silence and
22 didn't tell him of the dangers and he removed it with his bare
23 hands and as a result, he probably saved many other peoples
24 lives but he lost his own and we don't know ourselves, how we
25 will be affected. My sister and I both have breathing

1 problems, I have a huge lump growing in my throat now. I don't
2 know what it is. My father was probably one of the first
3 people to die from mesothelioma and asbestos and we, you know,
4 what they offer, what is that a years salary, few years salary
5 for him being take from us so soon? I just am asking your
6 guidance in helping us to find the best solution and appreciate
7 you listening to me. That's more than what we've ever had
8 before.

9 THE COURT: Ms. Ohnemus, what is happening with
10 respect to this plan confirmation, if this case is confirmed
11 today, you will have the opportunity to file claims against the
12 Trust that will be formed through this plan confirmation order
13 and that Trust will be responsible for adjusting all of the
14 claims that are filed against it. You'll have certain
15 documentation that you'll have to come up. Medical records,
16 and so forth but --

17 MS. OHNEMUS: Okay.

18 THE COURT: It will all be explained to you when the
19 Trust is actually formed and the procedures are instituted by
20 that Trust. That will not happen for several months, it just
21 takes some time to get the Trustee in place and the Trust
22 advisors in place and the Trust up and running. But you will
23 get a notice that will indicate what you have to do in order to
24 file a claim against that Trust. And, at that point in time,
25 whatever you can prove in the way of damages, the Trust has a

1 schedule that it will pay out. I am not permitted to give you
2 legal advice, I would suggest -- one second, Mr. Lockwood, can
3 Ms. Ohnemus contact you for additional information as to what
4 the Trust component will be about?

5 MR. LCOKWOOD: Certainly, Your Honor.

6 THE COURT: All right. Ms. Ohnemus, the name and
7 phone number of the person to contact for additional
8 information is Peter Lockwood, he is one of the attorneys for
9 the Asbestos Claimants Committee, and his phone number is --

10 MR. LOCKWOOD: Area code 202-862-5065.

11 THE COURT: Did you get that?

12 MS. OHNEMUS: I did. And, I don't know if my sister
13 would have anything to add to this.

14 THE COURT: All right, Ms. Hoch?

15 MS. HOCH: Yes. Everything that my sister Janet
16 Ohnemus has said is true. And, what you responded to her with
17 was filing claims against the Trust. Your Honor, we have filed
18 and filed and filed papers, Chicago, California, Ohio --

19 THE COURT: Ms. Hoch, I'm sorry, I can't hear you.
20 Are you on a speaker phone?

21 MS. HOCH: No, ma'am.

22 THE COURT: Okay, I apologized. Operator, please,
23 can you turn the system up so that we can hear these folks?

24 UNIDENTIFIED FEMALE SPEAKER: Yes, Your Honor.

25 MS. HOCH: And, also I would like to address -- I

1 hear myself in the background. The stallings of Owens Corning
2 in regard to our father and also reference to some legal cases
3 as best as we can understand them.

4 As I said, good morning, Judge Fitzgerald and Saul
5 Ewing, Sidley, Austin, Norman Pernick and all the other
6 attorneys for the Debtors and special counsel. Your Honor,
7 thank you and Owens Corning for this opportunity to speak and
8 share this hearing as we feel that we have a long awaited legal
9 right.

10 We have sent summary -- responses to our previous
11 email for this is a revised response to those e-mails. We
12 received by Fed. Ex. some papers from Owens Corning at three
13 o'clock p.m., in the afternoon of September the 13th and we had
14 to call telephonically, by ten o'clock a.m. the next day, in
15 order to be put on the scheduled agenda for this hearing. That
16 certainly is not much time to review papers, and what if
17 someone wasn't at home to happen to get those papers and notice
18 of calling for a hearing. They would lose their right of
19 objection.

20 I am acting in my behalf, Linda Hoch, and as
21 plaintiff and representative of the Estate of Edward Windorfer,
22 I am stating the basis and the nature of objection with
23 proposed language to be inserted to resolve some of these
24 objections. Even though there is widespread support for the
25 plan, we do have some concerns and we do want the plan to go

1 forward and succeed.

2 We have tried to make reference to Chapter 11 of the
3 U.S.C. federal statute and federal and state rules. We feel
4 our rights are impaired under the plan and the plan is not in
5 our best interest. We feel this to be unfair in the integrity
6 of individual civil rights and legal rights. May we together,
7 reason together, to resolve this Edward Windorfer case now and
8 forever and without additional filing of claims against the
9 Trust. We want to address some of our concerns in legal
10 reference to objection.

11 Objections to claims must be resolved before a plan
12 can be fully consummated, in Section 1106(a)(7) and 1107(a) of
13 the bankruptcy code. In legal reference, under Section 1127(a)
14 of the bankruptcy code, the plan proponent may modify the plan
15 at any time before confirmation. If it is determined that the
16 proposed modification does have an adverse effect on the claim
17 of non-consenting creditors, then another balloting must take
18 place. Section 1127 of the bankruptcy code. Since so many are
19 in favor of the plan, we feel that the modification should be
20 made in our particular case as we will further explain.

21 We filed a proof of claim and served it on the
22 reorganized Debtors with a written objection, which was
23 postmarked August the 28th, 2006, setting forth the basis for
24 our objection and the legal basis of our reference thereof. We
25 object to that part of the plan that we believe might affect

1 our current legal and civil rights as we have previously filed
2 a lawsuit. The judgment entry of Judge Franklin on November
3 the 30th, 2000 was a stay, pending the outcome of bankruptcy of
4 the Owens Corning Corporation, pursuant to the notice of
5 bankruptcy filing, filed with the Court on October the 30th,
6 2000. This is also in your papers that was filed with the
7 Court. The stay was to help Owens Corning and Fiberboard
8 financially, in reorganizing their companies. The Debtors'
9 believed that any significant interruption in supply of their
10 product would have caused, and it would have, any likely
11 permanent damage to their customer network. The stay caused a
12 significant loss of value and resulted in a greater permanent
13 damage to us as having not received anything since that time
14 for our father's death. We just kept going deeper and deeper
15 in the hole.

16 The plan will have an adverse effect, we feel, on the
17 claim of Edward Windorfer as it is so written. There is a
18 claim filed in the Court of Common Pleas, in Lucas County,
19 Ohio, for Edward Windorfer, who died on April the 28th, 1981.
20 We feel that this case should be looked at and honored and
21 reviewed by this Court and Owens Corning, before the plan is
22 accepted, we request that of the Court, and of Owens Corning
23 and their attorneys.

24 This is a filed legal lawsuit that the legislation of
25 the plan would block. My obligation here is that the

1 settlement of the restructuring proposal and the plan should
2 not be approved as it is in our case, as written, because of
3 the Estate of Edward Windorfer, would not be receiving a good
4 or fair equitable deal. The plan as we understand it would
5 make our legally filed claim an impaired claim, by which some
6 legal, equitable or contractual right is altered. We believe
7 that a plan by Owens Corning should not adversely affect or
8 impair the right of the plaintiff and a representative in the
9 Edward Windorfer case, or affect the rights to treatment
10 provided what we believe to be an Article 7 of the plan.

11 In special cases, like the Edward Windorfer case,
12 which is a genuine and legal case, containing everything to
13 prove a case, should remain unaffected and shall survive
14 confirmation of the plan and not be discharged when the
15 plaintiffs in this case, have satisfied the burden of proof in
16 their Ohio filed case, by a preponderance of the evidence.
17 They should not be discriminated against by a plan. Nothing in
18 a confirmation order of a plan shall be construed to
19 extinguish, limit or bar any direct personal claim.

20 We advocate leaving open the litigation option, which
21 preserves the right to sue. It would be wrong to ban suits
22 from asbestos exposure while the material is still being
23 imported into the United States. We have provided a very
24 detailed proof of claim in the Ohio court with all the elements
25 needed for full payment of the claim for the representatives of

1 the Estate of Edward Windorfer.

2 In legal reference, the court must accept the factual
3 allegations of the complaint as true. And this is Grays versus
4 Lowery, in the citation, MAMI versus Fallier, the citation.
5 The court looks to whether sufficient facts are pleaded to
6 provide the defendants with adequate notice to frame an answer.
7 Colburn versus Upper Darby.

8 In legal reference, a properly filed proof of claim
9 supersedes any scheduling of that claim. This is according to
10 Federal Bankruptcy Proceeding 3003(c)(4). Under Section 101(5)
11 of the bankruptcy code the word claim means a right of payment
12 or a right to a right to an equitable remedy for breach of
13 performance, if such a breach gives rights to a right of
14 payment. Such prior act and omission of the Debtors, Owens
15 Corning and Fiberboard arose before October the 5th 2000,
16 before the stay and this would give rise to our claims against
17 them. Such acts are for the personal injuries, sickness,
18 disease and wrongful death of Edward Windorfer. Asbestos was
19 used in building and it was very dangerous to his health
20 because of breathing tiny fibers in his lungs. He worked as an
21 insulator, also known as an asbestos worker. He worked on
22 boilers, pipe fittings, steam fittings, it's all in the case.
23 You can read it.

24 Dad came home covered with white dust. I used to say
25 to him, dad, you look like you cleaned out the chicken house

1 and you don't get the eggs. I get the eggs. The complaint in
2 Ohio has his health records and the pictures of buildings and
3 his work records, and also pictures of him as a very sick man
4 that had lost well over a hundred pounds. He once was a big
5 sturdy strong man that weighed 195, when he died he was
6 somewhere between 65 to 85 pounds at is death.

7 It should be written in the plan also that
8 mesothelioma cases should be treated with urgency and are given
9 high priority. The early doctors had difficulty even knowing
10 what they were looking at back in his day, of 1981, some
11 thought it could be emphysema but he never smoked. Then other
12 doctors as the time went on, were looking as the x-rays and the
13 could determine that this was plural mesothelioma, a lung tumor
14 that becomes so dense that it breaks the scapulas. The
15 following year it crushed his lungs and he died. Before he
16 died, you could stand beside his bed for the last several
17 months and hear the death rattle in his chest. He tried
18 everything that the doctors suggested for him to do because he
19 wanted to live, he wanted to live more than anything else in
20 this entire world and we wanted him to live. He meant more to
21 us than anything this world ever had.

22 Well, the misconduct of prior individuals, and we
23 understand not the current officers of Owens Corning or
24 Fiberboard, but the misconduct of the prior individuals show
25 clear and convincing evidence involving substantial harm to

1 Edward Windorfer, who was exposed in working with their product
2 and causing harm and loss to his family, and causing harm to
3 him, was the cause of his disease.

4 Let me now speak on Owens Corning and Fiberboard
5 delays. There have been years, years of excessive delay in the
6 Edward Windorfer case. There has not been a timely resolution
7 for this case. Breach of duty of good faith and fair dealing
8 by Owens Corning and Fiberboard. Because of such long delays,
9 different treatment should be permissible to first resolve
10 these older cases where some, like us, have waited 25 to 30
11 years for Owens Corning and Fiberboard to get their act
12 together and do the right thing.

13 It is such improper conduct by the Debtors to have us
14 wait for so many years. Think of you being in our shoes and
15 have gone through our situation and then you would understand.
16 We feel it is an unreasonable delay that is prejudicial. We
17 have already waited so many years for relief. As we
18 corresponded with Owens Corning and Fiberboard shortly after
19 our father's death, and because of our trials, hardship, we
20 even, before the statute of limitations, showed the discovery
21 rule when our niece was beheaded and we had to take our case to
22 the Supreme Court of the United States. When our land was
23 adverse possessed for a period of 19 years because of our
24 difficulties of our dad's death, and trying to claim and own
25 what little we had left. We sold about everything. My mother

1 had made the fiberglass drapes, the blue material that is shown
2 in the picture, we took down almost everything out of the
3 house, the drapes from the windows and sold them at a sale so
4 that mother could keep the little house that she lived in and
5 -- anyway. It's a terrible thing to lose whatever you have.

6 We corresponded with them, okay. If there was
7 something in the complaint that Owens Corning and Fiberboard
8 didn't like, then they should have called us, but they didn't.
9 Their conduct in this case shows years and years of delay and
10 with all the documents filed in Mr. Windorfer's case, the case
11 should be classified, with the claim holders as entitled to
12 priority, due to the aging date of this case.

13 Certainly claims that are older should have priority
14 and be settled first before more recent claims. Owens Corning
15 failed to perform in their conduct even before the year 2000
16 stay and our numerous letters and we wrote lots of letters.
17 You can look at them. They have had piles of them sent
18 directly to them, sometimes 15 pages at a time, single spaced,
19 expressing what we went through, and our request for an
20 equitable relief.

21 In legal reference, the bankruptcy code defines a
22 claim as a right to payment or a right to an equitable remedy
23 for a failure of performance, if the breach gives rise to a
24 right of payment and they failed to perform even in responding
25 to our letters. The plan is deficient because it contains no

1 class or treatment and for cases like ours, for such long
2 ignored claims like ours, that are entitled to a recovery and
3 reference to Section 510(b), it mandates that claims rank PARI
4 PASSU pari passu, sorry, with the holders of common stock.
5 Those common stock interests are classified by the plan as
6 Class 9.1, an unimpaired class. When all is shown and known in
7 certain cases, then certain cases should come under a special
8 impaired class or a clause.

9 For the year ending December 31st 2005, Owens
10 Corning, a very successful business and we are glad for them,
11 has 6.3 billion in sales. Now, we make reference to 768.73(b),
12 restrictions on punitive damages, a Florida statute that Owens
13 Corning was involved in, where the fact finder determined that
14 the wrongful conduct proven under this section was motivated
15 solely by unreasonable financial gain. In such cases,
16 plaintiff may recover an award up to four times the
17 compensatory damages awarded or 2 million. It is our
18 understanding that the legislature has placed no cap on
19 punitive damage awards where the defendants specifically
20 intended to harm the plaintiff and the defendants conduct did,
21 in fact, harm the plaintiff. The legislature appears to cease
22 -- or create, I'm sorry an exception, an exception for those
23 who fall within Subsection (b) of the amended statute.

24 When we refer to the Debtors disregard for the safety
25 of the plaintiff, Edward Windorfer, in the Owens Corning and

1 Fiberboard products that he handled and in the buildings, and
2 at the job sites he worked at, that were connected to Owens
3 Corning and Fiberboard, gathering all of this evidence together
4 in the complaint that is filed in Ohio, we gathered the
5 evidence and we took the case to court.

6 In legal reference, 768.73, where the fact finder
7 determines that the time of injury the defendant had a specific
8 intent to harm the plaintiff and determined that the defendants
9 conduct did, in fact, harm the complainant, there shall be no
10 caps on punitive damages. The sum of 2 million to each
11 claimant entitled thereto, or the lesser in the Ohio complaint,
12 as we did not -- mother, that is, and we did with agreement
13 with mother, Selma Windorfer, as to the amounts. We did not
14 change it when she requested the money that she did. We had
15 not seen it on punitive damages and we do not necessarily -- we
16 know that things were wrong, but we do not blame them, we feel
17 they will answer to a higher power and, therefore, it's not us
18 to judge our fellow man in this case.

19 We forgive them as this was a terrible thing, but we
20 do ask that relief be granted because our father suffered most
21 horribly, more than most anyone you could have ever -- more
22 than anyone mostly. To some this is how asbestos affected and
23 harmed our family and caused us severe financial difficulties.
24 Imagine you going through this, or your family going through
25 this.

1 First, asbestos destroys the lungs, the health of
2 those that you dearly love. Second, it robs the wage earner to
3 provide for him family, usually in bed, can't move, can't get
4 out. Third, it kills the wage earner in time. Fourth, it
5 causes you to lose about everything, through the sale and the
6 loss of your possessions. And, fifth, it robs, it continues to
7 rob the asbestos victims children. No matter how hard they try
8 to work and do what is right, asbestos caused our family hell
9 on earth.

10 We believe, I do not have much more, we believe that
11 we should not lose our legal and civil rights of a legally
12 filed case in the United States court system. This is what our
13 system is about. Respecting the individual's legal rights as
14 well as the rights of companies and corporations. We are in
15 favor of the plan that will help Owens Corning, we have always
16 wanted the best for anyone whether that be an individual or a
17 corporation. If the affects of the word "without prejudice",
18 is to prevent the decree of dismissal from operating as the bar
19 to our current claim or as the bar to a subsequent suit, please
20 do not make void what is a legal claim in this particular case
21 for Edward Windorfer, thereby depriving the earlier opinion of
22 all authority as the precedent.

23 We do not want the plan to bar the right to bring or
24 maintain an action on the same claim, or cause of sickness or
25 illness in case we, the daughters of Edward Windorfer, Janet

1 and Linda, come down with the disease in a few years, from the
2 exposure to our father's clothes and certain Owens Corning and
3 Fiberboard products.

4 At this point we do have trouble catching our breath.
5 At the end of his workday, we would greet our father with hugs
6 and kisses. He said the best part of his day was when his
7 little girls would put their arms around his neck and say,
8 daddy, we love you. One shouldn't be penalized in the course
9 of a trial as to the introduction of particular evidence. We
10 hope that prior claim of interest and the -- any direct or
11 personal claims or future claims as we may have under
12 actionable, non-bankruptcy law.

13 And in regard to the trust, I think it's a good
14 thing. But should you deny us our legal and civil rights,
15 would you place the total requested claim or an amount in the
16 trust for the beneficiaries of Edward Windorfer and allow this
17 claim to be given security credit or treatment, entitled at
18 least to a priority and paid from the trust.

19 Yes, we believe that any person or entity seeking an
20 allowance of final compensation with regard to a tort claim
21 should provide a proof of claim with the bankruptcy court that
22 would entitled them to relief. We have tried to do this, but
23 in the short notice, we could not make all -- again all of
24 those stacks of papers relating to the claim in Ohio, as we
25 didn't have the time to do that. We were lucky to be able to

1 call in for a telephonic conference, to do e-mails, to write
2 out what we have just written to you, and we have three boxes,
3 three feet long that we have made papers, that document where
4 our father worked, every place he went and pictures,
5 everything. I think our case was overlooked because there was
6 too much facts in the cases, would have brought too much to
7 light in the State of Missouri, Illinois and Iowa, because the
8 business and buildings that contained asbestos. He took it out
9 of state buildings, federal buildings, schools, hospitals. As
10 a matter of fact, he took it out of the hospital where he went
11 to be a patient when he became sick with mesothelioma.

12 He also took it out of churches. He worked with
13 insulation, boilers, roofing, he was a well skilled man, he had
14 went to the eighth grade and graduated and then he went to
15 Quincy College, in Quincy, Illinois, during night school, and
16 he worked at the sheet metal trade during the day. Also, it
17 should be known that the business agent has a letter in there
18 regarding Edward Windorfer's work at the Quincy, Illinois
19 Veterans Home, that when he installed the asbestos they found a
20 cardboard where Edward Windorfer wrote his name on the
21 cardboard and dated it and that project was found to be
22 heavily, heavily contaminated with asbestos. And then there's
23 other examples of the places that he worked.

24 THE COURT: Ms. Hoch, Ms. Hoch, I'm going to cut you
25 off. This is not the time or the place to recite your father's

1 work history.

2 MS. HOCH: I'm sorry. Could I -- can you give me two
3 more minutes, I'm almost done. Okay, in legal reference to
4 3003 to the party documenting the claim in order to be treated
5 as the creditor, we pray this claim would be subject to a
6 separate claims process to be established by the court. A
7 separate claims process to allow for fair treatment of special
8 circumstances like this. And in light of the facts and
9 circumstances, which are presented to the trier of facts in the
10 complaint, the case should be an exception to the rule, on
11 exception to the plan and it would be paid fully and pursuant
12 to an order of the Court.

13 We hoped for years that we could reason with them and
14 we'll get past this and, please, help us at this point in time
15 to have some life left other than the memories of the past and
16 we d not know what factual truth or what the other side did not
17 want revealed in this document or what was tried to be ignored,
18 but our father's death did happen and his exposure did happen
19 and he worked with Owens Corning and Fiberboard materials
20 exclusively and extensively.

21 Also, the plan and confirmation order should
22 adequately provide for the timely payments of cure amounts in
23 cash. Currently read, that the current payments required by
24 Section 365(1) of the bankruptcy code, shall be made following
25 the entry of a final order resolving such dispute. Would you

1 think of the wording as maybe changing it to read, the cure
2 payments required by Section 365(1), or any other cure
3 payments, should be made before, not at the final entry, but
4 before, and put in writing, of the final order resolving such a
5 dispute. It is --

6 THE COURT: Ms. Hoch, with respect to 365 --

7 MS. HOCH: -- resolve the objection by a cure amount
8 claim, in cash, on the effective date, or on such other terms
9 as agreed to by the parties, like the payment of a cure amount
10 claim required by Section 365(b)(1) of the bankruptcy code,
11 made in resolving the dispute and assuming the assumption and
12 approving the assumption.

13 THE COURT: Ms. Hoch, with respect to Section --

14 MS. HOCH: Your Honor, we pray the plan may not
15 contend to preclude rights in claims of the Edward Windorfer
16 case, 20000-2919. Will you be so kind to make good on this and
17 may Owens Corning make good on this, as Edward Windorfer was a
18 suffering servant for Owens Corning and Fiberboard and his
19 sacrifice on earth, may it be recompensed and we want to
20 forgive and forget that this happened, and put this behind us
21 and may today be a day of deliverance from Owens Corning and
22 also for us in this case and we ask for an order from the Court
23 granting relief upon the current facts. And may you give the
24 Edward Windorfer case your highest consideration. We ask this
25 of the Judge and of Owens Corning. Thank you.

1 THE COURT: Okay. Ms. Hoch, with respect to Section
2 365, that section does not apply to your claim and that of your
3 father, so with -- regarding cure amounts, that has to do with
4 leases and executory contracts, not with tort claims. So I'm
5 going to let the Debtor respond to your objections, but with
6 respect to your claim under 365, I have to overrule that it's
7 simply not applicable.

8 MS. HOCH: Yes, and I understand and I stand
9 corrected and I'm sorry. We do not have lawyers, in writing
10 the complaint we did not use a lawyer, we only used the
11 products that we knew our father had used.

12 THE COURT: Yes, I understand, I'm going to permit
13 the Debtor to respond at this point, Ms. Hoch, because -- I
14 think I understand your claim, but this is not the time where
15 the Court is going to adjudicate claims under this plan, your
16 claims will have to be filed against the trust. The bankruptcy
17 code prohibits me from making exceptions within classes, in
18 fact, the code requires that claimants with equal claims be
19 treated the same way in a class and so, in that sense I cannot
20 make an exception for your father's claim or your claims. Mr.
21 Conlan.

22 MR. CONLAN: Yes, Your Honor, briefly. James Conlan
23 on behalf of the Debtor. We are sorry for the Windorfer family
24 loss, and the loss of everyone who was hurt by asbestos,
25 produced, manufactured by our company.

1 That said, I can tell you that this has been a hard
2 fought case, the Asbestos Creditors Committee and the Futures
3 Representative have fought ably on behalf of asbestos
4 claimants. They negotiated a very good deal for themselves and
5 their clients. Approximately \$5 billion dollars worth of value
6 will go into the 524(g) trust that will respond to the claim
7 against the 524(g) trust and with respect to particular
8 questions about how mesothelioma claims are dealt with in the
9 cure and the pecking order, I would defer to Peter Lockwood or
10 Elihu Inselbach but I do know that the trust distribution
11 procedures, which we've all been through, are of the type and
12 structure that have been approved in these cases for years.

13 THE COURT: Mr. Inselbuch.

14 MR. INSELBUCH: Yes, Your Honor. Our Committee has
15 represented throughout this bankruptcy, claims like the
16 Windorfer claim and I might say we have become, we as lawyers,
17 have become familiar with the suffering that these people have
18 had.

19 What I fear is forgotten sometimes, in the courtrooms
20 of this country and particularly in the bankruptcy courts, when
21 we talk about tort claims as kind of a dry item is that for
22 every tort claim there are people like the Windorfer's who
23 suffered terribly. Their father died from mesothelioma which
24 is one of the most terrible diseases known to man and we
25 probably as a committee have represented in this bankruptcy

1 approximately 15 or 20,000 victims of mesothelioma and the
2 Futures Representative looks to a future where there will be an
3 additional 10 to 15,000 terrible deaths from mesothelioma
4 resulting at least, in part, from exposure to the products of
5 these Debtors.

6 We also have the terrible lung cancer deaths, which
7 are of equivalent number and the problem that we faced here is,
8 and the reason why these Debtors were in bankruptcy, is there
9 is not enough money to the extent that money can every
10 recompense for these injuries. There's simply not enough money
11 to pay those claims.

12 As Judge Fulham estimated, the asbestos liabilities
13 of these Debtors were \$7 billion dollars. The Debtor had many,
14 many other liabilities. There simply was not enough assets to
15 provide 100 percent payment to these claimants as there wasn't
16 to pay other creditors as well.

17 524(g) of the bankruptcy code enacted in response to
18 the bankruptcy of Johns Manville some years ago, provides the
19 methodology for the treatment of these claims. If we were
20 required by the bankruptcy code to liquidate each of these
21 claims in front of this court, before we could exit the
22 bankruptcy, we would never be able to get any money to anybody.
23 The structure of this plan provides for the creation of a trust
24 as Mr. Conlan has said, absent the enactment of the so called
25 Fair Act, which to me is an oxymoron. Absent the enactment of

1 the Fair Act, there will be approximately \$5 billion dollars in
2 assets that will be put into this trust. This trust will have
3 the responsibility for resolving the legitimate claims of all
4 asbestos victims and as the Futures Representative has seen to
5 it, to treat them all equally over time.

6 I'm hopeful that we can have this plan confirmed and
7 we can move on to the point where this trust can be set up and
8 the claims like the Windorfer's can be fairly and promptly
9 reviewed. Thank you.

10 THE COURT: Okay. Ms. Hoch and Ms. Ohnemus and if
11 your mother. Mrs. Windorfer is on the phone, you as well. I
12 have to overrule your objection to confirmation in that you are
13 asking for special treatment for your claims, because as I've
14 explained that is something that the bankruptcy code prohibits
15 this Court from enforcing and, indeed, if the Debtor tried to
16 treat your claims differently from other similarly situated
17 claims in a class, that plan would not be confirmable for that
18 very reason.

19 This trust, although it is not going to pay claims a
20 hundred cents on the dollar if the estimate of \$7 billion
21 dollar in claims is the correct assessment, the trust will be
22 funded with approximately \$5 billion dollars over time, not 7.
23 Nonetheless, it seems to this Court to be the best resolution
24 for tort victims. It will, without the need if you choose to
25 accept the trust distribution procedures in full and to settle

1 these cases, not require that you go to trial. You won't have
2 to wait any longer than getting through the claims processing
3 of the trust and the experience with other cases, claims
4 processing through the trust has been that the distributions
5 are much more rapid than litigating each and every one of these
6 asbestos claims in the tort system.

7 So, even from a prospective of not having further
8 delay, I believe this trust distribution procedure is a fair
9 and equitable way to deal with all tort victims, including
10 yours and your father's claims.

11 I apologize, Mr. Pernick and Mr. Conlan, I don't
12 remember the number of asbestos claims that were voted in the
13 various classes. Can somebody give me a ball park number?

14 MR. PERNICK: Can I have one minute, Your Honor?

15 UNIDENTIFIED FEMALE SPEAKER: Your Honor --

16 THE COURT: Just one minute please.

17 MR. PERNICK: Your Honor, it was approximately
18 600,000 asbestos individual claims were voted.

19 THE COURT: Okay.

20 MR. CONLAN: And may I add, Your Honor, that over
21 99.5 percent of those voting, voted to accept the plan.

22 THE COURT: And I don't recall seeing this, I'm not
23 sure there was a breakdown. Is there a breakdown by subclass
24 within that class as to how many, either mesothelioma or lung
25 cancer claims were submitted?

1 MR. PERNICK: Your Honor, the balloting agent may
2 have the data, but it's not a number that they calculated, so I
3 don't have it for you, I apologize.

4 THE COURT: Okay. I didn't recall seeing it. So, I
5 guess I can just tell you that historically, and that may not
6 be the case in this specific case, but historically, the
7 mesothelioma claims are approximately 3 percent of the other
8 claims that are voted in the cases and lung cancers, if I
9 recall, are approximately 10 percent, 5 percent? 5 percent of
10 those cases. So, of the 600,000 claims that were voted,
11 roughly 8 percent of that 600,000 would be people who have
12 suffered to the same extent that your father suffered and your
13 family suffered in this case. As a result, if each of those
14 cases were to go to trial somewhere, by the time that process
15 worked its way through, the Debtor probably would be bankrupt
16 in an economic sense and not have sufficient funds to pay
17 anyone anything or at least very little. This distribution
18 through the trust procedure, although there are limitations on
19 how much can be paid, I think is the fairest and best
20 resolution for all victims concerned in the tort system. So, I
21 will overrule your objection. I have already given, or Mr.
22 Lockwood has already given Ms. Ohnemus' phone number so that if
23 you have additional concerns as to how to process your claim
24 through the trust, you can be in touch with him. Since you
25 have three boxes of documents already prepared to support your

1 claim, I would think that it could be expeditiously handled
2 when you get the notification of how the trust procedures will
3 work and I'm not sure, are any of the members of the TAC or the
4 trustee present today? There is no one here. Mr. Lockwood,
5 I'm going to charge you with getting in touch with those people
6 and ask them please as soon as this claim is filed, to see
7 whether or not they can deal with it expeditiously.

8 MR. LOCKWOOD: Your Honor the TDP provides in the
9 FIFO processing que for priority for oldest claims. If this
10 claim has, in fact, been pending for 25 years, it will be,
11 assuming that it gets filed within the first six months of the
12 trust operation, it will be entitled to a priority on that
13 basis.

14 THE COURT: All right.

15 MS. HOCH: Glad to hear that.

16 THE COURT: All right. So, if you will get in touch
17 with Mr. Lockwood, he will attempt to give you some
18 supplemental information that will assist with processing your
19 claim, but please understand, he cannot act as your counsel.
20 If you need a lawyer, you're going to have to get one on your
21 own. But he will explain to you what the process is all about.

22 MS. HOCH: I'm sorry, what was his name again?

23 THE COURT: I'm Judge Fitzgerald.

24 MS. HOCH: No, the man who --

25 THE COURT: Mr. Lockwood, Peter Lockwood.

1 MR. LOCKWOOD: Peter Lockwood.

2 MS. HOCH: How do you spell that?

3 MR. LOCKWOOD: L-o-c-k-w-o-o-d.

4 MS. HOCH: Thank you. I was hearing impaired,
5 thanks.

6 THE COURT: All right. You've got the phone number?

7 MS. HOCH: Thank you, Your Honor, and thanks to Owens
8 Corning for listening to our plea and may God Bless all of you,
9 and everything work for the best, for everyone, Your Honor.

10 THE COURT: I think everybody here shares that
11 sentiment. Thank you.

12 MS. OHNEMUS: Your Honor --

13 THE COURT: Yes.

14 MS. OHNEMUS: I'm Janet Ohnemus and I thank you also
15 for allowing me to speak and as we are going through these
16 proceedings, I just received another packet from -- through
17 Federal Express from Saul Ewing, so I don't know about their
18 timely manner of delivery of paperwork, I hope that that does
19 improve.

20 THE COURT: Well, I will inquire, what's with the
21 delivery issues, Mr. Pernick?

22 MR. PERNICK: Your Honor, we've actually been trying
23 very hard, as we do with everybody that makes an inquiry, to
24 respond very quickly and get documents out. That package, I
25 believe that Ms. Ohnemus is referring to is actually the agenda

1 from Friday night. And so we have sent previous agendas. I
2 know that Pauline Rekaliak (phonetic) from my office and others
3 have talked to one or both of them on occasion. We have done
4 everything we can to get document out quickly. I think
5 sometimes that gets perceived, for example, we're trying to
6 give the agenda from Friday night, get it to them we did it as
7 quickly as we could, but it was only to get changes to them.

8 THE COURT: Ms. Ohnemus, I can assure you that I got
9 my copy of the agenda at home approximately seven o'clock on
10 Saturday night as well. So, I can appreciate the fact that
11 you're only getting delivered today the changes from Friday.
12 But that is apparently what this new packet will be. It does
13 not require any further response on your behalf.

14 MS. OHNEMUS: Okay, thank you.

15 THE COURT: All right, thank you. If the operator
16 could mute the phone again, please, until we get to the next
17 level of objections. Are there any other individual objections
18 to be addressed?

19 MR. PERNICK: Well, Your Honor, I believe that there
20 were one or two other individuals that you were dealing with
21 before we dealt with that objection, that were on that chart of
22 people who sent correspondence, or actually, these two did not
23 send anything, but I think they wanted to speak.

24 THE COURT: Okay. Well, the three who are listed,
25 Ohnemus, Windorfer and Hoch, were all related to the Windorfer

1 claim.

2 MR. PERNICK: Oh, I apologize then. I just wanted to
3 make sure there wasn't anybody else.

4 THE COURT: Okay. Let me inquire. Is there anybody
5 on the phone who is not represented by counsel, and who is not
6 involved in the Windorfer matter, operator, if you could please
7 unmute the phone for a minute. Any response? All right, there
8 are no responses. Is there anyone in court who has an
9 individual claim, someone who is not represented by counsel?
10 There are no further participants by phone or in court who are
11 not represented by counsel alleging personal injury claims.
12 And, I have overruled the three objectors claims for the
13 reasons that I've stated on the record. Okay. Mr. Conlan.

14 MR. CONLAN: Your Honor, James Conlan, again, on
15 behalf of the Debtor. As we've suggested a couple of times, we
16 have two unresolved objections, although it's possible that I
17 can resolve one of them with the type of clarification that we
18 attempted with Mr. Klauder on the phone. I'm going to be very
19 clear on this.

20 516(b) of the plan deals with third party releases,
21 not releases of causes of action that belong to the estate, for
22 example, derivative causes of action or causes of action that
23 are otherwise for the benefit of all creditors, but so called
24 third party or personal causes of action.

25 The way we have structured the plan, those third

1 party releases, again sometimes called personal releases, are
2 entirely consensual. For example, if a party like Kensington
3 doesn't vote, then they do not give that third party release.
4 If they vote and they check the box, they do not give that
5 third party release. The only people who give that third party
6 release are people who vote and do not check the box. A couple
7 of background facts with respect to Kensington.

8 Kensington is an affiliate of Elliott. You know that
9 name, they were a bank debt holder that has been very active in
10 this case for years. You also know that in connection with our
11 bank deal, the agent and the Steering Committee, sought to have
12 Kensington dismiss the New York State action which Kensington
13 brought against current and former directors and officers.
14 Third point. The New York State court just dismissed that
15 cause of action, on August 22nd of 2006 citing among other
16 things that it is a derivative cause of action.

17 Now, Kensington has sought clarity that its cause of
18 action, again, assuming it's personal, that it's not giving a
19 third party release, again, without regard to whether their
20 cause of action is a third party claim in contrast to property
21 of the estate without prejudice to that. The answer is very
22 straightforward. If the cause of action is a third party
23 claim, one that is personal to them, not derivative, not
24 property of the estate, then it is not released because I don't
25 believe Kensington voted on the plan.

1 Kensington's objection, actually, doesn't even talk
2 about what I just described, instead, it requests among other
3 things, a clarification that certain what I'll describe as
4 supplementary injunction provisions, don't apply, don't have
5 the effect of extinguishing and joining their alleged third
6 party claim. Let me be clear.

7 If there's a third party claim that is not released,
8 the injunctions will not prohibit the prosecution of it. And
9 that may, on the record, satisfy Kensington, I don't know.

10 THE COURT: Mr. Shaffer?

11 MR. SHAFFER: Thank you, Your Honor, I'll be very
12 brief, because I think I can be very brief. Yes, our objection
13 was not to the consensual release because, indeed, we did not
14 consent to the third party release, our objection was actually
15 more in the term of a request for clarification, that had to do
16 with two other sections of the plan which, at least on their
17 face, appeared to grant third party releases. One was a
18 provision in the discharge provision, 14.9(b), which says that
19 all persons shall be precluded from asserting against the
20 related persons, which includes officers and directors, and
21 then it has a whole list of types of claims.

22 And then there was also some language in what
23 otherwise would have been the asbestos injunction 5.17(a) that
24 also seemed to do that, far beyond the asbestos contact.

25 If I'm getting assurances from Debtors' counsel that

1 these sections do not apply to the Kensington lawsuit to the
2 extent that the Kensington lawsuit is a third party lawsuit,
3 then we are done. I am -- we can all go home.

4 MR. CONLAN: We're done.

5 MR. SHAFFER: Thank you.

6 THE COURT: All right. Why don't we take a very
7 brief recess, let's say 10 minutes and then we'll come back and
8 deal with the last objection.

9 MR. CONLAN: Okay.

10 THE COURT: All right.

11 MR. CONLAN: Thank you, Your Honor.

12 (Short recess)

13 THE COURT: Please be seated. Mr. Conlan.

14 MR. CONLAN: Yes, Your Honor, very briefly. The last
15 -- I mentioned two objections, this is the second of them.

16 Objector to whom we refer as Ackerman, objects to the plan on
17 the basis that a holder of the \$130 million dollar DEM bearer
18 bonds, which we sometimes call the Deutsche bearer bonds, is
19 entitled to the same lien rights under the negative pledge of
20 Section 8.2 of the relevant debenture, that is the debenture or
21 indenture relating to those bearer bonds as afforded to the
22 bank holders claims and what it appears is this.

23 Section 8.2 of the relevant indenture provides
24 negative pledge language. It says the borrower, that would be
25 Owens Corning Delaware, because OCD is obligated on these

1 bonds, just like OCD is obligation on all the other bonds that
2 you've heard about, the borrower, OCD, will not itself, not
3 will any of its consolidated subsidiaries, secure any
4 indebtedness for money borrowed or any guarantee or indemnity
5 in respect thereof, by any mortgage, pledge or any other lien
6 or encumbrance.

7 What that basically means is, Owens Corning Delaware
8 could not grant a lien on the assets of its subsidiaries.
9 Owens Corning did not grant a lien on the assets of its
10 subsidiaries, it gave guarantees as you're well aware, to the
11 banks, that is the subsidiaries gave guarantees to the banks,
12 those are unsecured guarantees.

13 The plan as you know --

14 THE COURT: Don't they constitute a claim or an
15 encumbrance? I mean, the language is broader than lien, it
16 says claim or encumbrance. And, isn't the guarantee a claim or
17 an encumbrance?

18 MR. CONLAN: We don't think so, Your Honor.

19 THE COURT: Oh, well, okay. Somebody better give me
20 some state law that tells me what applies then, and how that
21 applies because it seems to me that if you give a guarantee,
22 you've encumbered something, at least your financial
23 wherewithal. Isn't it a contingent right to pursue a claim?

24 MR. CONLAN: A guarantee is certainly a contractual
25 right, Your Honor --

1 THE COURT: Right.

2 MR. CONLAN: -- to collect for the subsidiary
3 guarantor, but we do not believe it is an encumbrance, mortgage
4 pledge or other lien which we regard as a property interest in
5 the assets of the subsidiary.

6 THE COURT: Oh, I see what you're saying. The
7 difference between a contractual claim and a property right,
8 okay.

9 MR. CONLAN: Precisely, Your Honor. What I can also
10 tell you is, as you are well aware in this case since it's gone
11 on for years with respect to this issue, the plan preserves the
12 structural subordination of the bondholders claims, including
13 these bonds against OCD, and that is required by the
14 substantive consolidation ruling that we're all very, very much
15 aware of, but it does not subordinate these bondholder claims,
16 that is, these DEM bondholder claims to the claims of the bank
17 debt holders.

18 Finally, Your Honor, if there is a single grouping of
19 issues that has been beaten to death in these cases, it is the
20 entitlement of the banks to recover contractually on those
21 guarantees.

22 For all those reasons, we just don't think there's
23 any merit at all to this objection, but I believe counsel for
24 Mr. Ackerman is in the courtroom.

25 THE COURT: I'll hear from Mr. Ackerman's attorney.

1 MR. MARCUS: Your Honor, Christopher Marcus, Weil,
2 Gotshal and Manges for Credit Suisse, as the agent. We do have
3 a response as well to this objection. I'm happy to allow Mr.
4 Ackerman to speak first if Your Honor would rather take it in
5 that order.

6 THE COURT: I think I should hear from Mr. Ackerman
7 and then I'll hear your responses.

8 MR. MARCUS: Thank you.

9 THE COURT: Thank you. Good morning.

10 MR. BODNER: Good morning. My name is Irving Bodner,
11 I'm an attorney in New York. I would like to respond with two
12 points. Number one, we believe that the language, the
13 definition of the lien, as set forth in the declaration of
14 undertaking, is broad enough to encompass the so called
15 contractual claim as mentioned by the Court. Particularly, the
16 language which says as follows. The term lien shall include
17 covenants, restrictions, encumbrances, I'm skipping words here,
18 but each one of these broad terms are specifically defined in
19 the declaration of undertaking set forth by Owens Corning
20 Fiberglass in the undertaking with respect to the issuance of
21 these debentures in 1985, 12 years before the issuance of the
22 bank holders claims.

23 Now, let's make it clear here, we are not asserting
24 that there is any restriction in this debenture that precludes
25 the issuance of the guarantees in this bank holder claim. We

1 are simply asserting is that under this declaration of
2 undertaking, we become pari passu with these guarantees under
3 the terms of this declaration of undertaking.

4 THE COURT: With the guarantees?

5 MR. BODNER: With the priority that is asserted by
6 the bank holders. That's number one. That the language of
7 this undertaking is broad enough to encompass the covenants and
8 guarantees and when I stress the word covenants here I refer
9 specifically to the whole host of covenants set forth in the
10 bank credit agreement issued on -- dated June 26, 1997,
11 particularly Article 8, because what those covenants did was to
12 prohibit, the banks prohibited Owens Corning from issuing any
13 mortgage, any lien whatsoever, again, very broadly defined, on
14 the underlying assets of Owens Corning and all its subsidiaries
15 existing at that point in time, except for very limited
16 exceptions.

17 By so limiting Owens Corning, they, in fact, with
18 this negative pledge, they encumbered all of Owens Corning and
19 then on top of that, having the subsidiaries issue their
20 guarantee directly to the banks, wrapped up the entire assets
21 of the company.

22 THE COURT: But, it's a contractual right, it's not a
23 property interest right and I think Mr. Conlan is correct, I
24 was being misled, and going down the wrong path because a
25 contractual right is not a property interest. It is a claim,

1 but it's a contingent claim only in the event that certain
2 events occur, which at this point, haven't happened and it
3 still would not preclude property rights. The banks, I think,
4 have not attempted to prevent the Debtors from entering into
5 contracts, but they have attempted to prevent the Debtor, with
6 the few exceptions as you've pointed out that really aren't
7 relevant to this discussion from encumbering its property so
8 that the property that stands behind the mortgages and the
9 other liens, will retain the value that's necessary to pay the
10 bank debt claim.

11 There's a big difference between an encumbrance of a
12 property interest and a contingent claim that's created by
13 contract.

14 MR. BODNER: In responding to the Judge, may I just
15 pont out to the end, to the conclusory definition of lien set
16 forth in the declaration of undertaking in the Deutsche Mark
17 Debenture, that the term lien here is not limited to real
18 property as the Judge would suggest, but it says specifically,
19 for example, it says in the case of any security, referring to
20 --

21 THE COURT: Share.

22 MR. BODNER: -- shares, warrants or options to acquire
23 such security. So, this, we believe, indicates that the
24 limitation on encumbrance is not limited solely to real assets,
25 but even non-real assets, such as securities, are limited by

1 the term lien.

2 THE COURT: That may be, that there's an additional
3 covenant that indicates that you can't impose an encumbrance on
4 the stock, but that's still not relevant to the contract
5 rights.

6 MR. BODNER: Then --

7 THE COURT: Because the guarantee doesn't affect the
8 stock either. And, it's not a property -- it's not an
9 encumbrance on the stock. It's essentially a financial
10 covenant. It can be more, it gives rise to a claim, but it's
11 essentially a financial covenant that says that in the event
12 that the borrower, Owens Corning Delaware can't pay the debt
13 back, one of the subs will do it. I don't think it's a
14 violation of the debenture.

15 MR. BODNER: Let me then move to my second point, and
16 that is that this action by Owens Corning in 1997 issuing these
17 guarantees by the subsidiaries, violated what's called the so
18 called doctrine of equitable lien. In other words, you can so
19 encumber a company's property and assets as to make the
20 negative pledge almost meaningless by tying up everything and
21 in this case the covenants by prohibiting Owens Corning from
22 issuing any kind of a lien, mortgage or other, on its property
23 as well as the guarantee of all of its significant
24 subsidiaries, in effect created a total tie up of Owens
25 Corning's assets so as to vitiate the intent and purpose of

1 this negative pledge covenant issued previously in 1985 to the
2 Deutsche Mark Debenture.

3 And, as support for that, we cite the language in
4 Metropolitan Life Insurance versus R.J. Nabisco, where the
5 Second Circuit recognized the effect that encumbrances that are
6 created may have so as to create, in effect, an equitable lien
7 on the assets of a company and this has also been recognized,
8 the American Bar Association's commentaries on indentures,
9 where a whole host of cases, particularly in the 1930's, during
10 the depression, when companies became bankrupt and the courts
11 recognized that prior creditors who had a negative pledge
12 covenant, should be entitled to an equitable lien.

13 If the Court feels that the language of this
14 undertaking in 1985 is insufficient to make it clear, then at
15 least the standards of equity and fairness that prevail in
16 bankruptcy should at least give us an equitable lien against
17 the priority of the bank holders. And I point out in
18 particular the Deutsche Mark Debentures in this case and that
19 what prompts my coming to this court, frankly, is that they are
20 suffering worse than any class of debenture in this case
21 because of the fact that you have Deutsche Mark Debentures and
22 under the terms of these debentures, the valuation of the
23 debenture is set at the date of filing, it's merely an accident
24 of history here. And, therefore, since the dollar exchange
25 rate to the Deutsche Mark at the time of the bankruptcy filing

1 in 01 was at a relatively high level, the recovery to the
2 Deutsche Mark Debenture, even though they are on equal par with
3 the other debentures, is, I believe, as much as 30, 40 percent
4 below the other debenture holders. So, it's stated in the plan
5 of reorganization that the recovery should be 58 percent, but
6 the fact is, these bonds are now trading and quoted as being
7 offered at 20 Deutsche Mark to the face amount in the current
8 market. That shows you the deep discount that these debentures
9 are suffering as a result of the effect of this situation.

10 THE COURT: Well, on that point, I mean, that's the
11 risk that everybody takes by either buying a bond or a share of
12 stock or whatever.

13 MR. BODNER: That's correct.

14 THE COURT: So, the value issue, I think is not a
15 basis for this Court to set aside the exact terms of the
16 debenture to try to impose what would be equitable for the
17 Deutsche Mark Debenture holders, but not necessarily equitable
18 for other classes of creditors if the Deutsche Mark Debentures
19 were paid more than the value that's stated pursuant to the
20 debenture, whereas other creditors would then be at further
21 risk. So, I think on that score, this Court's equitable powers
22 do not lie to set aside the terms of the debenture itself and
23 I'll have to ask for a response with respect to the concept of
24 the equitable lien by virtue of tying up the Debtors assets to
25 the point where some form of equitable lien should be imposed.

1 MR. BODNER: Thank you.

2 MR. CONLAN: Your Honor, James Conlan, I'll respond
3 briefly to the equitable lien and then turn the podium over to
4 counsel from Weil, Gotshal.

5 Your Honor, the facts of an equitable lien just don't
6 exist here and the reason why, among others, is that value
7 comes up from the subsidiaries of Owens Corning Delaware to
8 Owens Corning Delaware under what we call the waterfall
9 analysis. So, it isn't the case that we tied ourself all the
10 way up, the reality is that the bondholders, including Mr.
11 Bodner's client, are receiving substantial value, as you know,
12 depending on how you count it, 55 to 58 cents on the dollar at
13 a \$30 per share value. The movement in the Deutsche Mark
14 relative to the dollar, we can't respond to that, their claims
15 are what they are, but the facts for an equitable lien just
16 aren't here factually.

17 MR. MARCUS: Again, Your Honor, Christopher Marcus,
18 Weil, Gotshal and Manges, for Credit Suisse as agent. Very
19 briefly, Your Honor. I would also point out that on the
20 equitable lien issue, that what Mr. Bodner is asking for in
21 this objection actually is not an equitable lien and I would
22 point out another basis upon which to overrule the objection.
23 And the remedy that they're seeking here is actually not at all
24 an appropriate remedy.

25 As it stated in Mr. Bodner's reply and as he just

1 stated on the record, he does not argue that the issuance of
2 the guarantees violated a provision of the DM Debentures and,
3 in fact, he says his only argument is that once granted, the DM
4 Debentures require pari passu treatment with the banks. Then
5 he goes on to say, this result can be achieved by ordering the
6 banks to relinquish 3 percent of their recover. There's simply
7 no basis to force the banks to give over some of their recovery
8 to the DM Debenture holders, even if his underlying argument
9 was correct, that he had some kind of equitable lien on the
10 Debtors property. There's just simply no basis for the bank
11 holders to hand over some of their recovery and --

12 THE COURT: Well, who else would he be pari passu
13 with?

14 MR. MARCUS: Well, he is pari passu with the bank
15 holders at the Owens Corning level, presumably, he does not
16 have claims against the subsidiary level and so he doesn't have
17 a right to be treated pari passu with any creditors at the
18 subsidiary level.

19 THE COURT: Okay.

20 MR. MARCUS: Thank you, Your Honor.

21 THE COURT: Mr. Bodner, do you have anything further?

22 MR. BODNER: Yes. I believe the language of the
23 undertaking and Section 8.2 of the indenture of the Deutsche
24 Mark Debenture is broad enough to encompass an undertaking or
25 an obligation by Owens Corning and it's consolidated

1 subsidiaries existing in 1985 with respect to their obligations
2 here and recognizing pari passu treatment for any subsequent
3 creditor who receives what's called -- anything that might be
4 construed as an equitable lien.

5 THE COURT: Well, I don't understand the issue with
6 respect to the subsidiaries. The bonds are not -- the
7 debentures that were issued are not obligations of the
8 subsidiaries in any respect, are they? I haven't seen any
9 language that indicates that the subsidiaries guaranteed
10 performance of the debentures.

11 MR. BODNER: But I believe that subsidiaries and a
12 parent, when a parent issues bonds, and specifically sets forth
13 in the bond that it or its -- and its consolidated
14 subsidiaries, and specifically refers to a limitation of assets
15 involving more than 15 percent of those consolidated
16 subsidiaries and specifically provides for that in Section 8.2,
17 that no more than 15 percent of its subsidiaries. So, in other
18 words, the subsidiaries were clearly contemplated by Owens
19 Corning when it issued its undertaking in 1985, then those
20 subsidiaries are also, let's be realistic here, when any parent
21 issues bonds, and it refers to and obligates is consolidated
22 subsidiaries taken as a whole, we don't have separate, I've
23 never seen, I don't think anyone here in this room has seen
24 where a bond issuance involving a parent company is
25 simultaneously signed individually by 22 consolidated

1 subsidiaries.

2 THE COURT: But that's not -- I think that's not what
3 thus paragraph says. It says, I'm going to eliminate some of
4 the wording, but Owens Corning --

5 MR. BODNER: Are you looking at the undertaking or at
6 Section 8.2?-

7 THE COURT: Yes, I am, declaration of the
8 undertaking. Or is it Section 8.2 you want to refer to?

9 MR. BODNER: Well, both.

10 THE COURT: All right. Declaration of undertaking.
11 Owens Corning, herewith undertakes as Trustee for the
12 bondholders, until such time as principle interest in
13 additional amounts, if any, of the bond terms have been --

14 MR. BODNER: I'm sorry, I can't find what you're
15 reading.

16 THE COURT: I'm reading the very first full paragraph

17 MR. BODNER: Go ahead.

18 THE COURT: -- of the declaration of the undertaking,
19 Exhibit 2 to your response to -- let me get the title of your
20 document.

21 MR. BODNER: All right. If we go down five lines to
22 the word neither, it says there, neither the company nor any
23 consolidated subsidiary.

24 THE COURT: Right. Will at any time secure any
25 indebtedness for money borrowed or any guarantee or indemnity

1 in respect thereof, by any mortgage pledge secured interest or
2 other lien or encumbrance upon any of the present or future
3 revenues, property or assets of the company or the consolidated
4 subsidiaries, the value of which in the aggregate, shall exceed
5 15 percent of the total assets of the company, its consolidated
6 subsidiaries and so forth. It's not saying that those
7 subsidiaries -- that 15 percent of the subsidiaries can't do
8 something, it's saying that the Debtor can't cause its
9 subsidiaries to guarantee more than the consolidated 15 percent
10 value of the Debtor and the subsidiaries on a consolidated,
11 annual balance sheet basis.

12 MR. BODNER: Correct, but going back to the beginning
13 of that clause, starting with the word neither --

14 THE COURT: Right.

15 MR. BODNER: -- it says, neither the company nor any
16 consolidated subsidiary.

17 THE COURT: That's right.

18 MR. BODNER: So, the obligation here is clearly
19 stated on behalf of Owens Corning and its subsidiaries.

20 THE COURT: Right, but what the obligation is is not
21 to -- let me find it again here.

22 MR. BODNER: Not to encumber more than 15 percent of
23 the total assets of the company and its subsidiaries, that's
24 all. It's just saying, if the company is worth \$5 million
25 dollars, you can't encumber more than 15 percent of those \$5

1 million dollars.

2 THE COURT: Well, in broad brush strokes, that's
3 correct. But the specific pledge is that it will not issue a
4 mortgage, pledge, security interest or other lien or
5 encumbrance on the present or future revenues, property or
6 assets. It doesn't -- but, a guarantee is not that, it's a
7 contractual obligation.

8 MR. BODNER: It's not only the guarantee here that
9 we're discussing, Your Honor, it's also the covenants that are
10 issued in that same document, that same document --

11 THE COURT: In the declaration of undertaking?

12 MR. BODNER: No, I'm talking about the bank letter,
13 the bank credit agreement. The bank credit agreement consists
14 of, in Section 8, particularly of that agreement --

15 THE COURT: Yes, the affirmative and negative
16 covenants.

17 MR. BODNER: And, those covenants so tie up the
18 company's revenues, property or assets. Now, may I just touch
19 on the language revenue here. They are arguing that this lien
20 so to speak is limited to property, or real assets only, what
21 about the word revenues? Revenue is not a real asset, it's a
22 future asset.

23 THE COURT: Better be a present asset in some
24 instances, too.

25 MR. BODNER: But when a company speaks of revenue,

1 it's always in the future, it's never in the past. Property
2 and assets reflect things that exist at that moment in time.
3 Revenues refer to future. So, the lien restriction here, the
4 encumbrance restriction here, clearly contemplates more than
5 real assets, that's my point.

6 I mean, what they've done essentially is, vitiate the
7 whole negative pledge covenant by being very creative and --
8 it's not unusual to issue guarantees by subsidiaries, I'm not
9 saying it's unusual, my point here is that the language here is
10 broad enough to protect my clients debentures. And, they're
11 saying, let's ignore it. It should not be so easily ignored,
12 particularly here when the language, I think, should be
13 construed by the Court adversely against those who drafted it
14 and the drafters here were the people who made this
15 undertaking, Owens Corning, and I would argue, the company and
16 its consolidated subsidiaries jointly made this undertaking,
17 not just a parent who they want to make as not relevant to this
18 subsidiary.

19 I believe when this language was drafted, it was
20 clearly contemplated that the assets of the subsidiaries were
21 quite substantial and represented the major source of the
22 company's assets. Every multinational company operates through
23 a multitude of subsidiaries, for a host of reasons, tax
24 reasons, et cetera, liability reasons and what not. I would
25 host to venture to say that the multinational companies at the

1 parent level have very little real assets. The real assets
2 lie, almost always in subsidiaries. Equity should look at the
3 underlying equities here, what's being done? What's being done
4 here is vitiating a negative pledge covenant because it's
5 inconvenient. Thank you.

6 THE COURT: Okay.

7 MR. CONLAN: Your Honor, James Conlan, I won't repeat
8 what I've already said and what you've already said, but I do
9 want to respond to one point and that is, Owens Corning
10 Delaware is not a naked holding company, it has enormous assets
11 itself and those enormous assets, as well as the value that
12 flow up from the subsidiaries after the payment of the banks in
13 full, are what is funding all of the distribution to Asbestos
14 here and the substantial distribution to bondholders and to Mr.
15 Bodner's client. The objection should be overruled.

16 THE COURT: Well, when I look at the document and the
17 declaration of undertaking, the specific pledge is that the
18 companies and the subsidiaries to the extent that those are
19 relevant, will not secure any indebtedness for money borrowed
20 or any guarantee or indemnity in respect thereof by, this is a
21 quote "any mortgage, pledge, security interest or other lien or
22 encumbrance upon any of the present or future revenues,
23 property or assets of the company" and I'm stopping the quote
24 there. It seems to me that mortgage and certainly lien to a
25 certain extent, would apply to real property as would

1 encumbrance. The pledge security interest, possibly other lien
2 or encumbrance could also apply to certain personal property,
3 but nonetheless, all of them are property interests.

4 I was incorrect when I said earlier on this record
5 that I thought that the language said claim or encumbrance, it
6 does not specify claim, it only specifies lien encumbrance
7 mortgage pledge or security interest, none of which seem to be
8 affected by a guarantee. In saying that, though, what I am not
9 certain about under applicable law is whether a guarantee
10 constitutes a pledge of a source. In some state laws,
11 possibly, a guarantee does constitute a pledge, I don't know.
12 I take it this is applicable New York law? I don't have that
13 part of the document, so I'm not sure. I know that Owens was
14 an Ohio company according to this document, but I don't know
15 what law applies because I don't have that portion of the
16 document. Whatever the law is, I guess the issue is, does the
17 provision of a guarantee by a subsidiary constitute either a
18 pledge or an encumbrance under the law of that state.

19 And, the second question would be, if it does, does
20 it rise to the level of more than the 15 percent caveat. And I
21 don't think anybody has briefed that issue, so maybe I'm asking
22 something that's either not relevant or that no one intended to
23 brief. I don't know.

24 MR. CONLAN: Your Honor, just if you'd give me a
25 moment.

1 THE COURT: All right. See, I think the problem that
2 Mr. Bodner is raising is the definition of lien in this
3 document itself. I'm sorry.

4 (Pause)

5 THE COURT: Gentlemen, could I interrupt your
6 discussion? One portion of Mr. Bodner's argument I think I can
7 do away with and to the extent that this may take care of this
8 situation, I think I need to put this on record.

9 Part of Mr. Bodner's argument refers to the
10 definition of lien, which is in the declaration of undertaking
11 at the bottom of Page 33. And it says, lien shall mean any
12 interest in property securing an obligation owed to, or claim
13 of a person other than the owner of the property, whether such
14 interest is based on common law, statute or contract and
15 including but not limited to the security interest or lien
16 arising from a mortgage, encumbrance, pledge, conditional sale
17 or trust receipt or lease, consignment or bailment for security
18 purposes. The term lien shall include reservations,
19 exceptions, encroachments, easements, rights of way, covenants,
20 conditions, restrictions, leases and other title exceptions and
21 encumbrances affecting property and in the case of any
22 security, warrants or options to acquire such security. For
23 the purpose of these bonds, the company or consolidated
24 subsidiary shall be deemed to be the owner of any property
25 which it had acquired or holds, subject to a conditional sale

1 agreement, capital lease or other arrangement, pursuant to
2 which title to the property has been retained by or vested in
3 some other person for security purposes. The term covenants
4 in that string of events and restrictions in that string of
5 definitions, Mr. Bodner says, means that the Debtor cannot
6 undertake the covenants that are then in the 1997 credit
7 agreement, but I don't think that's what this paragraph means.
8 This string is related clearly to title exceptions and
9 encumbrances affecting property and then there's a separate
10 section that deals with the security warrants or options to
11 acquire a security which is not right now relevant.

12 So, I don't think with respect to the lien issue,
13 that there is an issue. I do not believe that the 1997
14 agreement and its covenants, provides any bases for equitable
15 or other relief. My concern is still, however, with the
16 concept of the pledge. So, I apologize for interrupting your
17 discussions. If you want to continue them, that's fine, but to
18 the extent that you were going to get into the lien issue, I
19 don't think the lien is a problem.

20 MR. CONLAN: We were just talking about the lien
21 issue and the very paragraph Your Honor found as well. Your
22 Honor, neither we, nor Mr. Bodner briefed the question of
23 whether a guarantee is a pledge. Delaware law applies. We
24 don't believe, based upon my colleagues analysis, that any
25 state takes the position that a guarantee is a pledge. The

1 guarantee is contractual, the pledge relates to property
2 interest.

3 THE COURT: Okay. Well, I'm going to have to take a
4 look at that, so I think so I think you folks are going to have
5 to give me a brief on the subject. You may be correct, I
6 simply don't know. I've never had to examine the issue and
7 that's the only basis that I can see for relief, unless
8 somebody is going to give me a little more than, you don't
9 think, but rather that you know, or that you'll represent that
10 no state would treat a guarantee of a subsidiary as a pledge.

11 MR. CONLAN: Your Honor, Delaware is the applicable
12 law here.

13 THE COURT: Okay. And Delaware applies why?

14 MR. SHULMAN: A pledge is a --

15 THE COURT: You need to use the microphone. Why does
16 Delaware law apply? Is that in the document?

17 UNIDENTIFIED MALE SPEAKER: (Indiscernible).

18 THE COURT: I can't hear you from back there, sir.

19 MR. SHULMAN: Your Honor, the definition of a pledge,
20 which has been around --

21 COURT CLERK: Please state your name.

22 MR. SHULMAN: Oh, Jay Shulman of Saul Ewing on behalf
23 of the Debtor. The definition of a pledge which is a security
24 interest that even -- Uniform Commercial Code, is a possessory
25 security interest in property. A guarantee is no more than a

1 credit undertaking by a debtor. We could certainly brief this
2 but it is well beyond the pale to suggest that an agreement to
3 pay a debt becomes a possessory interest in personal property.

4 THE COURT: If that's the correct definition, I
5 wholly agree.

6 MR. BODNER: I'd just like to cite the conclusory
7 language of the declaration of undertaking of the Deutsche Mark
8 Debenture issued in 1985, on top of Page 34, and the subsequent
9 page reads as follows, "the rights and obligations arising from
10 this undertaking shall in all respects be determined in
11 accordance with the law of the Republic of Germany".

12 Now, this is because this was a Deutsche Mark
13 Debenture. I cannot speak now as to whether or not Delaware
14 law has subsumed this language because of the filing of Chapter
15 11 but clearly, the applicable law under this undertaking is
16 the law of Germany and so, I don't know, I can't respond that
17 Delaware is truly applicable and I would like permission to
18 brief this issue of the applicable language, the pledge
19 language as it affects a guarantee.

20 THE COURT: All right. With respect to the
21 definition under United States law, do you have any challenge
22 to the assertion that a pledge constitutes a possessory
23 interest?

24 MR. BODNER: Yes.

25 THE COURT: All right. We're going to take a five

1 minute recess and I'll return.

2 (Short break in proceedings)

3 COURT CLERK: May the court come to order.

4 THE COURT: All right, gentlemen, with respect to, at
5 least under United States law, it does appear that a pledge is
6 a possessory interest. Not only Black's Law Dictionary but a
7 host of probably 25 opinions that I was able to look at quickly
8 on line, indicate that that is the case.

9 We also did a search to see whether we could get an
10 English translation of German law and we found a couple of
11 sections. German law does indeed refer to pledges, but it is
12 not entirely clear in my very quick perusal, whether any of
13 those sections are relevant to what is transpiring before the
14 Court right now.

15 It does appear in the insolvency sections, under
16 German law, however, that there are entitlements to creditors
17 who hold pledges to a separate satisfaction, therefore, giving
18 rise to the concept that it, too, is a property interest, not a
19 contractual interest. So, at this point I am inclined to think
20 that it is likely that a pledge will, indeed, affect the
21 property interest, not a contractual interest, however, I am
22 happy to give you a few days to brief the issue. I do not
23 think it is going to make a difference based on this very quick
24 research but, again, it was 10 minutes worth of research, not
25 what all of your law firms will be able to put together in

1 however long you decide to brief the issue, I guess. Yes, sir?
2 I think counsel for the agent has something to say.

3 MR. MARCUS: Your Honor, I just wanted to sort of be
4 clear about what you said. Is this something that you were
5 envisioning briefing in connection with confirmation?

6 THE COURT: Well, it's an objection to confirmation.

7 MR. MARCUS: Okay, because I think that this is --
8 that we can get past confirmation. I don't think that this
9 actually is a confirmation issue and let me explain why.

10 He has a negative pledge covenant in his declaration
11 of undertaking, which nobody thinks gives him the right that
12 he's entitled to and, in fact, it is his burden to come here
13 today and show you that he's entitled to this and he has not
14 done that. He has not come here with any German law, but even
15 if he can, even if he has a right under his indenture and the
16 credit agreement violated that in some way, his right was to
17 declare a default under his indenture, which I have no idea
18 whether he's done. It sounds like that was not done back in
19 1997. But if he did, he has a claim, he has a claim for breach
20 against the Debtors. And so, he can assert that claim, if it's
21 at all timely in the claims process. The plan doesn't change
22 that fact. So, if he has a claim against Owens Corning, he
23 asserts that claim. If he feels he has a claim against a
24 subsidiary as well, then he asserts the claim against the
25 subsidiary and that gets dealt with in the claim reconciliation

1 process.

2 And so, it is actually not at all a confirmation
3 issue, it is a claims reconciliation issue and I would suggest
4 that the Debtors are probably going to tell you that we looked
5 at this very quickly. That the indenture trustee for this
6 issue did not file a claim against any debtor other than Owens
7 Corning, and I do not know if Mr. Bodner did, but that their
8 ability to now assert a claim, five or six years after the bar
9 date against a subsidiary debtor, is no longer timely and so
10 that issue should be dispatched very quickly. But that's the
11 issue, whether he can assert a claim against the subsidiary.
12 If he does, the plan explains how he gets paid, and that's it,
13 that's the issue.

14 THE COURT: All right.

15 MR. MARCUS: Thank you, Your Honor.

16 THE COURT: Thank you. Mr. Conlan.

17 MR. CONLAN: Your Honor, I can confirm that they did
18 not file claims against any subsidiaries, they only filed a
19 claim against Owens Corning Delaware. Just to repeat in part
20 what Mr. Marcus just said. Even if a guarantee is a pledge, we
21 don't think it is. Even if it were, they would have a breach
22 claim against Owens Corning Delaware and their claim could be
23 no more than the amount of the instrument.

24 We recognize that claim, we will pay that claim.
25 Frankly, this legal argument doesn't even affect the quantum of

1 that claim. Their claim is for the face amount of the
2 instrument, just like Mr. Rahl's clients claims are for the
3 face amount of the instrument. They can come up with ten
4 different theories of breach. We breached Mr. Rahl's documents
5 as well when we filed bankruptcy, when we didn't pay him, when
6 we didn't pay interest, it doesn't go anywhere, Your Honor. We
7 don't want to brief it because we don't think, even if he were
8 right, and he's not, that it would matter. So, we don't see it
9 as a confirmation issue.

10 THE COURT: All right. So, the plan in your view is,
11 essentially, allowing the claim at the face amount and paying
12 it pursuant to the terms of the plan. So, whether or not there
13 is an objection to confirmation, the issue as to whether or not
14 it should be pari passu, in your view, is a claims resolution
15 issue and if, in fact, the Debtor is somehow incorrect in what
16 the plan says the distribution has to be, it will be resolved
17 through the claims process?

18 MR. CONLAN: Correct.

19 THE COURT: But there's been no claim filed.

20 MR. CONLAN: Well, they filed a claim against Owens
21 Corning Delaware for the face amount of their instrument, the
22 amount that they --

23 THE COURT: The indenture trustee.

24 MR. CONLAN: -- that's correct.

25 THE COURT: The indenture trustee filed it.

1 MR. CONLAN: Correct.

2 THE COURT: Okay. And that includes Mr. Bodner's
3 clients?

4 MR. CONLAN: Correct.

5 THE COURT: Okay. So, Owens is somehow responsible
6 for figuring out what the appropriate allowed claim is, but
7 you're conceding the allowance of the claim in the plan, so
8 where do I have a claims allowance issue?

9 MR. CONLAN: Let me confer with my colleagues for one
10 minute.

11 MS. MARCUS: Excuse me, Your Honor, just real
12 quickly. The only claims allowance issue would be if Mr.
13 Bodner was to assert a claim against a subsidiary.

14 THE COURT: Well, he can't do that now.

15 MR. MARCUS: I agree with Your Honor. I don't think
16 that he can, I think he's time barred from doing that, but that
17 would be the only issue. This is merely a claims issue and
18 he's too late on the claim.

19 THE COURT: So, the pari passu -- I'm sorry, some how
20 or other I got myself mixed up. I thought this was easy and
21 now I've gone down the wrong path, I guess.

22 MR. CONLAN: Yes, let me answer your question, I'm
23 sorry, Your Honor. The plan does provide that the claim of
24 the bondholders, in general, including the indenture trustee
25 under this bond issuance, is allowed at the face amount of the

1 claim.

2 THE COURT: Okay.

3 MR. CONLAN: And, so, he can have 15 theories of
4 contractual liability damages, his claim will never be more
5 than that amount and he will receive, they will receive the
6 distribution to which they're entitled on that allowed claim.

7 THE COURT: All right. So, it's a distribution issue
8 that I'm looking at, so I'm back to a plan confirmation issue.

9 MR. CONLAN: No, Your Honor, we don't see it as a
10 distribution issue.

11 THE COURT: Well, I don't have a claim issue, you're
12 conceding the face amount of the claim, which is all they're
13 entitled to, against Owens. There's been no claim filed
14 against the subs, so there's no claim that can be allowed
15 against the subs.

16 MR. CONLAN: Correct.

17 THE COURT: So it has to be a distribution issue if
18 there's any issue at all, because there's no claim issue, you
19 conceded the claim.

20 MR. CONLAN: We don't think there is any issue at
21 all.

22 THE COURT: Well, I know that, you've responded, but
23 I don't -- I think at this point I'm not -- I believe that
24 there has been an objection lodged. I'm not sure that I see
25 any merit to the objection, I think I need to hear from Mr.

1 Bodner.

2 Mr. Bodner, my very brief look at what a pledge is
3 does not seem that it's going to give you a legitimate or a
4 sustainable objection to this plan.

5 MR. BODNER: I want to stress a very important point.
6 The issue of what a pledge is does not -- should not be limited
7 to simply and only the guarantee. There is more here than
8 simply the issuance of a guarantee by Owens Corning and its
9 consolidated subsidiaries in favor of the bank credit group.

10 What was done here is totally encumbering all of
11 Owens Corning's assets.

12 THE COURT: But it isn't.

13 MR. BODNER: Yes, it -- let me explain, if I may,
14 very briefly. By giving those covenants, the covenants
15 specifically encumbered all of Owens Corning's real property
16 and we're trying to bifurcate the guarantee language, which is
17 arguably, argued by the bank group, as not being a property
18 interest and the negative pledge which was issued to those
19 banks, which encumbered all of Owens Corning's asserts and what
20 I mean by that is that by precluding Owens Corning and its
21 subsidiaries from issuing any mortgage, lien, whatsoever, on
22 any of its assets, other than \$20 million dollars, what they
23 effectively did was tie up all those assets and then by, in
24 other words, what they did was, from the bottom up, tie them up
25 and then issue that guarantee on top, to doubly wrap it up. In

1 other words, they've wrapped up the bottom by tying up the
2 assets, the real property, and then issued a guarantee which is
3 a superseding encumbrance on those underlying assets.

4 What I'm -- and what has to be understood here is,
5 that the guarantee is not an isolated pledge, or promise here.
6 The guarantee comes together with a package and that package,
7 that package totally tied up the property.

8 THE COURT: But it doesn't --

9 MR. BODNER: It does, it does, because --

10 THE COURT: To the extent that it is prohibiting
11 Owens and the Debtors from encumbering the property by issuing
12 the mortgage, it's preserving value. It's not tying up value.

13 MR. BODNER: Exactly, it's preserving value to make
14 all the value in that guarantee.

15 THE COURT: But to the extent that whatever the bank
16 debt is paid, leaves assets available for the bonds, you're
17 better off not worse off.

18 MR. BODNER: The credit agreement was a \$2 billion
19 dollar credit agreement.

20 THE COURT: Yes.

21 MR. BODNER: In order to protect that credit
22 agreement, what they did was, Owens from 1997 and thereon, was
23 precluded from doing anything with all of its assets. Do you
24 realize what has been achieved here?

25 THE COURT: That --

1 MR. BODNER: All of its assets are untouchable.

2 THE COURT: Mr. Bodner, that's an overstatement,
3 number one. Even the documents that you've cited don't say
4 that. There are limitations with respect to what the documents
5 can do, but to the extent that the tied up assets, it's
6 preserving value to pay the bank debt and to the extent the
7 bank debt is satisfied from any of those assets, it's then
8 preserving value for the subordinate levels of debt.

9 So, I'm losing the issue as to --

10 MR. BODNER: Because distinguishing between what is a
11 property interest and what is an inchoate non-property interest,
12 is a very delicate thing. But were that guarantee come
13 together with pledges, covenants, that so tie up all of the
14 company's assets in a very, very significant and substantial
15 way, let's understand, the banks here, their purpose was to
16 protect \$2 billion dollars and make that \$2 billion dollars a
17 priority claim against the totality of the company.

18 THE COURT: All right. So that happened in 1997, was
19 a default declared?

20 MR. BODNER: No, there was no default because they --
21 all this, all --

22 THE COURT: Under your indenture.

23 MR. BODNER: -- all my indenture provides is, once
24 you do that, I become pari passu, there's no default by doing
25 that. There's no prohibition. I'm not arguing, there is no

1 prohibition against doing it. What they did was --

2 THE COURT: I don't see anything in this declaration
3 of undertaking, at least in the sections that have been
4 provided --

5 MR. BODNER: All it says is, all it says is --

6 THE COURT: -- that give you a pari passu right to
7 what could otherwise be construed as a secured claim. Where is
8 it in this document that you get yourself bootstrapped into a
9 secured position, or pari passu with a secured creditor when
10 you're nothing but a debenture holder?

11 MR. BODNER: They are not a secured creditor either,
12 they're unsecured and they've been stating that.

13 THE COURT: But they have certain assets that have
14 been committed to pay that debt, the guarantees of the
15 subsidiaries that don't apply to the debenture holders. So, I
16 agree, they are not secured as to Owens, but they have
17 additional collateral that they can look to to secure the
18 repayment of the debt that the bondholders can't look to.

19 So, your claim to be treated pari passu, my question
20 is with what? If it's to the Owens debt, which is the only
21 claim that I see that anybody has under these debentures is
22 against Owens, because there is no guarantee of the
23 subsidiaries for the debentures. So, if you're pari passu with
24 the banks as to the Owens debt, this plan attempts to address
25 that issue by providing the distribution that is in accord with

1 the circuits non-substantive consolidation ruling that looks to
2 each of the independent enterprises of this estate and the non-
3 debtor enterprises of the estate, values those assets and pays
4 the creditors of those independent assets something and in this
5 instance, what they've agreed on, and then looks to Owens to
6 pay its creditors. Your client has an unsecured claim against
7 Owens. The allegation I believe that I'm facing is that as to
8 Owens, at the Owens level, your clients and the banks and
9 everyone else are getting their claims allowed in full, and
10 then getting the appropriate distribution percentage based upon
11 the plan's structure.

12 So, I don't understand, even if you were successful
13 in processing this objection, I don't see how you're entitled
14 to a 3 percent surcharge against the bank debt because they
15 have claims against the subsidiaries that your client doesn't
16 have claims against, which is why I say I've lost somehow or
17 other one of the guys who practiced criminal law when I was a
18 criminal prosecutor, used to tell the jury that they had to
19 keep their eye on the squirrel because the squirrel always
20 found the nuts. Well, I've lost the squirrel. It worked for
21 the juries, they loved it.

22 MR. BODNER: I believe the language of the
23 undertaking, the declaration of undertaking issued in 1985
24 specifically obligates Owens and its subsidiaries.

25 THE COURT: Okay, and that is the point at which I

1 disagree. It does say that Owens will, and it's subsidiaries
2 --

3 MR. BODNER: Neither Owens nor its subsidiaries, what
4 does that mean?

5 THE COURT: -- will not pledge assets. But it does
6 not create a guarantee by the subsidiaries. It's simply --

7 MR. BODNER: Not a guarantee nothing is -- it's
8 simply --

9 THE COURT: -- it's preserving the value at Owens.

10 MR. BODNER: -- it creates an undertaking, it creates an
11 obligation, it creates a promise.

12 THE COURT: I think you hit the nail on the head
13 earlier.

14 MR. BODNER: What is a promise?

15 THE COURT: You hit the nail on the head earlier.

16 Owens, as a holding company, looks to its subsidiaries for
17 value. Now, Owens in this instance has substantial value of
18 its own, I don't think that's the point that anybody is
19 conceding, but to the extent that there is upstreaming from
20 subsidiaries to the parent, this declaration of undertaking
21 essentially is saying that Owens isn't going to do something
22 that will prohibit its value from being diminished beyond what
23 this agreement says that it will prohibit.

24 MR. BODNER: It says specifically that they shall not
25 divest more than 15 percent of its subsidiaries property or

1 assets in favor of any subsequent creditor. It's black and
2 white.

3 THE COURT: Well, it says that it will not create a
4 lien or encumbrance, it doesn't mention divestment. A lien or
5 encumbrance upon --

6 MR. BODNER: Well, a lien is almost like a
7 divestiture.

8 THE COURT: Well, okay. I cannot see a basis to your
9 objection for the reason that I've stated earlier. I believe
10 that it is, number one, that the declaration of undertaking is
11 looking to property interests, not necessarily real property
12 interests, but property interests, nonetheless. The
13 contractual right is not a property interest, it is a different
14 animal and although sometimes figuring out which is which may
15 be a delicate enterprise, in this instance, I don't think it
16 is. The debentures are clearly obligations that the Debtor,
17 Owens Corning, has to pay. The subsidiaries have not issued
18 guarantees. The bank claims stand in an entirely different
19 posture which is the reason that this circuit, in essence, said
20 that no substantive consolidation would be approved. What your
21 argument is attempting to do, I think, is backdoor around the
22 substantive consolidation ruling of the Third Circuit, which
23 obviously, this Court, cannot do.

24 MR. BODNER: I don't believe in any way, shape or
25 form, the Third Circuit addressed any of the issues that we're

1 discussing here today. I'd like to reserve the opportunity to
2 brief this issue of the meaning of the pledge and whether a
3 pledge can mean a guarantee as well.

4 THE COURT: I'll give you a few days if you want to
5 take a look at that issue, but as I said, I really don't think
6 it's going to get you anywhere, but I understand you're in
7 court and you haven't had a chance to brief it since I raised
8 it today. So, I'll give you time to do that.

9 MR. BODNER: Thank you.

10 MR. RAHL: Your Honor ---

11 THE COURT: Yes.

12 MR. RAHL: Just very briefly.

13 COURT CLERK: Please enter your appearance.

14 MR. RAHL: Andrew Rahl, from Anderson, Kill & Olick.
15 With regard to the domestic bond and interest, all of them did
16 contain negative pledge clauses and, obviously, were impacted
17 by the bank covenants the same way that Mr. Bodner's clients
18 were. I just want to make two observations.

19 Obviously, if in some way Mr. Bodner's position is
20 upheld on any theory, perhaps, other than construction of
21 German law which, of course, wouldn't apply to the U.S. bonds,
22 whatever rights we might have that flow from that we certainly
23 would seek to reserve them.

24 I do want to also make the observation having,
25 obviously, been involved in the substantive consolidation

1 dispute for so long, as I just remarked to Mr. Bienenseick now,
2 I have to confess when we made the point about getting Mr.
3 Bodner's perhaps attempting to circumvent the Third Circuit's
4 ruling, I have to agree with your observation that you don't
5 have the authority to authorize that. I can only make the
6 further observation that I respectfully, on a personal level,
7 do disagree with the Third Circuit.

8 THE COURT: Do you have the ability to circumvent it,
9 Mr. Rahl? Okay. Go ahead, Mr. Marcus.

10 MR. MARCUS: Your Honor, on last point because I'm
11 not sure that I see the need for supplemental briefing by Mr.
12 Bodner, but if you just read the first paragraph which I think
13 contemplates the issuance of guarantees, I'm sort of in the
14 middle of the paragraph where it says --

15 THE COURT: Of the declaration of undertaking?

16 MR. MARCUS: Of the declaration of undertaking, I
17 apologize.

18 THE COURT: All right.

19 MR. MARCUS: It says, neither the company nor its
20 consolidated subsidiaries will at any time secure any
21 indebtedness for money borrowed or any guarantee or indemnity
22 in respect thereof by a mortgage. So, it contemplates the
23 grant of guarantees and he would only be entitled to whatever
24 rights he's entitled to under this document to the extent that
25 the guarantees were followed up by a mortgage or a pledge or

1 something else which, of course, they were not.

2 THE COURT: I agree in this instance that what this
3 document is attempting to do is prohibit the Debtor from
4 securing certain assets that would somehow or other diminish
5 the rights of the 1985 bondholders under this agreement. I
6 know that's painting with a broad brush but as a general
7 proposition.

8 My only question is whether in issuing the guarantees
9 the Debtors did create the security. I think from the brief
10 research that I've been able to do, that they did not, but
11 nonetheless, I raised the issue in court today, I think in
12 fairness, I have to give counsel a brief opportunity to take a
13 look at that issue. And I'm going to give him that opportunity
14 but I doubt that it's going to result in any different ruling
15 than an overruling of the objection.

16 MR. MARCUS: Thank you, Your Honor.

17 THE COURT: Mr. Bodner, how much time do you need to
18 brief this issue?

19 MR. BODNER: A few days. Thursday?

20 THE COURT: All right, that's September the 21st.
21 Anybody who wishes to file some opposition, how much time will
22 you need?

23 MR. CONLAN: Your Honor, we'll file our response at
24 the same time. I can't help myself, I have to say one more
25 time, even if he were right, his claim would still only be for

1 the face amount of his instrument and it would still only be at
2 OCD and we're still going to pay him just like other
3 bondholders, so I really do think we lost the squirrel here.
4 And two days is worth a lot of money to this company.

5 THE COURT: Well, you're not going to get a
6 confirmation order out of me before September 21st anyway, Mr.
7 Conlan, let's be real. So, you know, that is not going to tie
8 up the confirmation process in that sense. But with respect to
9 the question of whether or not -- I'm sorry, oh, the
10 distribution issue, whether or not the banks are some how or
11 other required, which is the remedy that's being sought to give
12 up the 3 percent of their claim to pay this class of creditors,
13 I still think that is a plan confirmation issue. It is not a
14 claims allowance process. You have conceded the allowance of
15 the claim at the Owens Corning level and there is no claim
16 against the sub, so it is purely and simply a distribution
17 under the plan. If the plan --

18 MR. CONLAN: An inter-creditor issue?

19 THE COURT: -- if the plan is incorrect in its
20 construction of the allowance of this claim, it can't be
21 confirmed because it's the plan that's providing for
22 distribution. So, it is a plan issue. And I think Mr. Bodner
23 can -- if Mr. Bodner is correct that somehow or others Owens
24 encumbered its assets in violation of the declaration of
25 undertaking and the remedy through the plan is that he has an

1 allowed claim but the percentage distribution is incorrect,
2 it's going to need to be fixed because it's the plan that sets
3 that distribution, it's not a claims allowance process, as I
4 see it. So, I think that's the issue. Okay.

5 So, everybody wants to brief -- everyone wants until
6 September 21st to take a look at this issue and brief the
7 matter and you're going to do both Delaware and German law, or
8 whatever law you deem appropriate. Okay. September 21.

9 MR. CONLAN: Thank you, Your Honor.

10 THE COURT: Mr. Bienenseick, did you have something
11 you wanted to put on record?

12 MR. BIENENSEICK: Thank you. What I was troubled
13 with was the suggestion that the Court ever needs to get to
14 German law for the following reason. The portion of the
15 indenture or the declaration of undertaking that my colleague
16 read a few moments ago, contemplates that there will be bank
17 debt and guarantees of bank debt. It actually uses the word
18 guarantees. It then says, if those guarantees are further
19 supported by mortgages or pledges, then there would be a
20 default under that declaration of undertaking.

21 Our point is, since guarantees were already
22 contemplated as being allowed, you never get to whether there's
23 a pledge, mortgage or anything else. He's complaining about
24 the guarantees which the declaration of undertaking blesses and
25 contemplates in the first instance.

1 THE COURT: I'm sorry, where is that? It says will
2 at any time secure any indebtedness for money borrowed or any
3 guarantee or indemnity.

4 MR. BIENENSEICK: That's it, that's it. Secure any
5 indebtedness for money borrowed or any guarantee or indemnity.

6 THE COURT: Right.

7 MR. BIENENSEICK: So, you can have money borrowed and
8 you can have a guarantee or indemnity of money borrowed --

9 THE COURT: You just can't secure it.

10 MR. BIENENSEICK: -- you -- exactly.

11 THE COURT: Right. And I think that is exactly the
12 point.

13 MR. BIENENSEICK: No, but no, Your Honor. He's
14 saying it was the guarantee that triggers his rights. This
15 says, we assume you've given a guarantee of your bank debt.

16 THE COURT: Unless -- I see what you're saying. That
17 can give a guarantee you just can't pledge that guarantee as
18 further security for the payment of some other claim.

19 MR. BIENENSEICK: Whatever a pledge is under German
20 law. But, seriously, this contemplates that you'll have bank
21 debt and you'll guarantee the bank debt and you'll indemnify
22 the bank debt. It only triggers rights on behalf of the
23 debenture holders if you then give a mortgage, pledge, security
24 interest or other lien for that guarantee.

25 THE COURT: That definitely seems to be the correct

1 construction.

2 MR. BIENENSEICK: You never get to the issues that he
3 was going to brief.

4 THE COURT: I think you're correct.

5 MR. BIENENSEICK: Thank you.

6 THE COURT: Mr. Bodner, I think Mr. Bienenseick is
7 correct. That the issue is not that the Debtor can't borrow
8 money, it's that the Debtor can't issue a pledge of a guarantee
9 in connection with that borrowed money. I have been missing a
10 line because I've been concentrating on the subsection that you
11 have referred me to without really paying much attention to the
12 entire paragraph, which is a dangerous thing to do.

13 So, I don't see the need for a brief, because even if
14 a pledge is a contractual right or a guarantee would be a
15 pledge under German law, nonetheless, that guarantee has not
16 been pledged as security for performance under the bank debt.
17 So, I think Mr. Bienenseick is correct.

18 For those reasons, I retract the briefing, I'm simply
19 going to overrule the objections for the reasons I've stated on
20 this record. Okay, Mr. Pernick?

21 MR. PERNICK: Your Honor, that closes the Debtors
22 case and I believe all the objections, but we may just want to
23 confirm that on the record, that there's nobody else with an
24 objection.

25 THE COURT: On the phone, please, if you could unmute

1 the phone line for a moment. Does anyone have any further
2 objection to confirmation, other than those that have been
3 addressed on the record today? Anyone? All right, there's no
4 response, you can mute the phone line again. Thank you. Does
5 anyone in court have any objection to confirmation other than
6 those that have been addressed on the record today? There is
7 no response. There are no other objections.

8 MR. PERNICK: Thank you, Your Honor.

9 MR. CONLAN: Thank you, Your Honor.

10 MS. HOCH: Linda Hoch.

11 THE COURT: Ms. Hoch? Yes, I've addressed your
12 objections.

13 MS. HOCH: I know. We just thought there might have
14 been a claim, we did not put it in in time against Anna Gress
15 and Hamilton Insulation. And for the --

16 THE COURT: Ma'am, ma'am, there hasn't been a claims
17 bar date. You do not need to worry about filing those claims.
18 You will be filing them against the trust for your personal
19 injuries. You will get appropriate notice and you can process
20 your claims against the trust for the personal injuries. You
21 are not barred from doing that by virtue of not having filed
22 anything with this court.

23 MS. HOCK: Okay. We filed on Saturday, but due to
24 the time limits of getting lack of their time of getting the
25 papers in time, we did on Saturday send by Fed. Ex. a proof of

1 claim but I don't think it was able to be processed before you
2 seen it, Your Honor. But, we did try.

3 THE COURT: No, I would not be seeing it, Ms. Hoch.
4 If this plan is confirmed, the Court will not be involved in
5 that process any further. It will be the trust that will take
6 effect and there are provisions in the trust for how you can
7 ascertain whether you agree with the trust documents and the
8 provisions of the trust or not and as I explained earlier, Mr.
9 Lockwood will provide you with some additional information as
10 to how the structure of that trust will work.

11 MS. HOCH: Okay. Well, thank you, Your Honor. And
12 we kindly appreciate listening to us, thanks.

13 THE COURT: All right, you're welcome.

14 MS. HOCH: Good-bye.

15 THE COURT: Okay, Mr. Pernick.

16 MR. PERNICK: Your Honor, since the hopeful
17 confirmation of the plan marks the near end of Owens Corning
18 bankruptcy cases, I wonder if the Court might permit Mr. Kroll
19 just to say a couple of quick words, which he'd like to address
20 the Court.

21 THE COURT: Yes, sure.

22 MR. KROLL: Good afternoon, Your Honor.

23 THE COURT: Mr. Kroll, good afternoon.

24 MR. KROLL: Steve Kroll, general counsel for Owens
25 Corning, the Debtor. Well, it's been a long road getting

1 here, Your Honor. I just wanted to say a few remarks before
2 the hearing was completed today.

3 When Owens Corning filed for Chapter 11, six years
4 ago, we really set three goals for our restructuring. First
5 and foremost was that any person who was harmed as a result of
6 being exposed to our product, we wanted to make sure that them
7 or their families were fairly compensated. That was first and
8 foremost in our restructuring.

9 Secondly, as we worked our way through this process,
10 we wanted to make sure that all of our creditors were treated
11 fairly and equitably, and last, we wanted to make sure that
12 Owens Corning, when we merged from Chapter 11, we did so
13 financially strong and prepared to grow and succeed into the
14 future. And, Your Honor, we're very proud of this plan. We
15 think that, in fact, we're confident that it is establishes or
16 that it satisfies all three of those goals that we had set six
17 long years ago.

18 There is one group of folks who really refused to be
19 distracted by a lot of the challenges and issues that this case
20 presented and that was the employees of Owens Corning. I mean
21 the employees of Owens Corning were focused on one thing, and
22 that was delivering quality products to our customers and
23 providing them with value and solutions. And, frankly, that is
24 the value that was created that we're now able to distribute
25 with this plan. And without our employees, frankly, there

1 would not be a plan. So, I did not want this hearing to go
2 without the contributions they made being reflected on the
3 record today.

4 We also wanted to take this opportunity to thank our
5 customers and our suppliers who saw this whole process through
6 with us and supported us for the entire case. We wanted to
7 thank the representatives of all the major creditor groups,
8 most of whom are here today, who worked very productively and
9 cooperatively in developing this sixth amended plan that was
10 overwhelmingly supported by all of our creditors. We want to
11 thank you, Your Honor, for the way you've continued to march
12 this case forward through a lot of difficult times and
13 challenging issues and the way you resolved disputes in a very
14 fair and thoughtful way. And we wanted to make sure we thanked
15 our outside advisers, our co-counsel, Saul Ewing and Sidley
16 Austin and our financial advisers Lazard. It was really their
17 collective experience and wisdom that helped guide us through
18 this case.

19 So, just to conclude, Your Honor, Owens Corning is
20 very proud of the way that we represented the Debtor through
21 this case. We're very, very anxious to be able to compensate
22 finally after a very long time our prepetition claimants and
23 creditors and we're very anxious to have the opportunity to
24 start building value for our new shareholders. Thank you.

25 THE COURT: That's very nice. You know, I appreciate

1 the fact that you are recognizing the employees and the
2 customers and the suppliers because I think sometimes the fact
3 that they do stick with the Debtor is understated and six years
4 is a long time, but frankly, given what this case went through
5 in that six years, I'm very pleased with the fact that you're
6 coming out when you are, this year. I, frankly, didn't expect
7 it for another two. So, that's good news.

8 MR. KROLL: Well, thank you, Your Honor.

9 MR. PERNICK: Your Honor, with respect to the order
10 and the findings of fact and conclusions of law, we actually
11 have a red line from the version that was filed --

12 THE COURT: Oh, good.

13 MR. PERNICK: -- I believe Thursday night that you've
14 seen.

15 THE COURT: All right.

16 MR. PERNICK: There are a couple of additional
17 paragraphs that we want to add in. One is the one that I
18 described to you before. The second one deals with just, I
19 believe, a clarification on the bank holders claims and
20 treatment. And, I think I have those -- the first one was the
21 one with respect to Mr. Gadsden, which I read. And the second
22 one is in Section 6(b)(3)(c) on Page 47, and it basically
23 preserves the banks rights to dispute the final allowed amount
24 of the claims. We don't anticipate that on fees and expenses
25 there will be an issue, but if there is, it preserves their

1 right to deal with that which is fine with us.

2 What I would propose is, we have actually given this
3 red line draft which I think incorporates all of the changes
4 dealing with the objections to the parties in the courtroom. I
5 don't want to speak for them, I'm not sure if they've all
6 signed off on it yet, but they've all had some opportunity to
7 see that. I think we would like to take a little bit of time
8 after court and ask anybody who is in court today if they have
9 any issues with that language to let us know before they leave
10 the court.

11 With respect to parties on the phone, if they would
12 send Mr. Conlan and I an e-mail letting us know they'd like to
13 see a copy of the order, we will go back to the hotel get that
14 right out to them and then once we get everybody's revisions
15 that we agree with, if we have a dispute we'll bring it to the
16 Court, but I don't anticipate that. We will then send over to
17 the Court, we'll hand deliver a red line and a clean copy of
18 both documents in final form.

19 THE COURT: All right. I spoke with the district
20 court judge about whether he wanted to sit jointly for purposes
21 of this hearing and he assured me that he did not, however, he
22 will be addressing the findings, especially with respect to the
23 524(g) injunction which, of course, he has to do.

24 MR. PERNICK: Right.

25 THE COURT: So, what I would propose, Mr. Pernick,

1 because of the exhibits that have been introduced into
2 evidence, I think it would be appropriate for the district
3 court to have a complete set and maybe, I don't know how
4 difficult this is, I'm not sure that I don't have mish-mashed
5 sets as a result of the fact that I had a set here and a set at
6 home, maybe it would be better when you deliver the
7 confirmation order, to deliver a clean set of the documents --

8 MR. PERNICK: Of the plan and exhibits?

9 THE COURT: -- the plan and the exhibits and the
10 declarations that have been admitted and your briefs that are
11 admitted, so that -- oh, you have it here.

12 MR. PERNICK: It's a little thick, Your Honor.

13 THE COURT: How nice. Okay.

14 MR. PERNICK: What we'll do is, we will do that and
15 we will submit a clean copy because we also thought it would be
16 important, not only for the district court and Your Honor, but
17 for parties in the future, if anybody ever had a question about
18 what was confirmed, we actually made the plan an exhibit to the
19 order for that reason, with all the schedules and exhibits.

20 THE COURT: Yes, okay. Well, that would be very
21 helpful then. I can just transmit that to the district court
22 with the proposed confirmation order and findings of fact.

23 MR. PERNICK: We actually have those two documents
24 for Your Honor to consider and then we did a one page order
25 incorporating those for Judge Fulham to consider if that's

1 acceptable to Your Honor. If Your Honor is not happy with
2 this, we can change it.

3 THE COURT: A one page order that does what?

4 MR. PERNICK: That basically confirms the plan and
5 the findings of fact and conclusions of law and the order that
6 Your Honor signed.

7 THE COURT: Oh, you mean an order for the district
8 court judge to enter.

9 MR. PERNICK: For the district court to consider.

10 THE COURT: That's fine. You can transmit whatever
11 you choose to Judge Fulham. You know, I don't know whether he
12 will be creating his own order or attempting to use the draft
13 or whether he'll be doing some supplemental hearing.
14 Obviously, I can't speak for him, I don't know.

15 MR. PERNICK: Would you like us to transmit those
16 documents once you sign or you would like to do it?

17 THE COURT: No, I would prefer -- yes, to have the
18 court record transmitted to Judge Fulham as the court record,
19 so I would prefer that you send to me the complete set and then
20 I will transmit to him in ordinary course of business, the
21 documents that I've looked at.

22 To the extent that the proposed findings need to make
23 reference to a specific exhibit, please do, okay, and the
24 modifications because the district court gets a little unhappy
25 sometimes when there are proposed findings without a record

1 site.

2 MR. PERNICK: Okay.

3 THE COURT: So, it would be helpful in the order and
4 in the proposed findings to do a record site.

5 MR. PERNICK: Okay, we will take care of that. Your
6 Honor, I'd also just like to echo Mr. Kroll's comments from the
7 Debtors side and thank everybody who was a participant in this
8 process and just as well Your Honor, for all the patience and
9 you did drive this case. We appreciate it and we appreciate
10 your efforts to get us here today.

11 THE COURT: That was very nice of you, Mr. Pernick,
12 not to say that I drove the case crazy.

13 MR. PERNICK: No, no, no. I wasn't even thinking
14 that, Your Honor. Wasn't even a thought in my mind.

15 THE COURT: Well, thank you.

16 MR. PERNICK: We do appreciate it.

17 THE COURT: And I have to pay my own compliments, you
18 folks have been very cordial with each other despite some very
19 hot and contested litigation that's been going on and that
20 actually makes it much easier for the Court to deal with the
21 issues as opposed to the personalities. So, I thank you all
22 for that.

23 MR. PERNICK: You're welcome.

24 THE COURT: Anyone further? Yes, sir. Mr. Gray?

25 MR. GRAY: Your Honor, just a very minor technical

1 point. Two of the exhibits to the plan, Exhibits L and M,
2 contain the warrant forms, the forms of the warrant agreements
3 and warrants that will be distributed to Classes A-11 and
4 A-12A. Just to make it clear on the record, and I believe the
5 Debtors are agreeable to do this, the warrant forms actually
6 have Owens Corning, a Delaware corporation is the issuer.
7 Given the restructuring transactions that are now contemplated
8 by the plan, and a new holding company at the top of that
9 structure that will actually issue all of the securities
10 including the warrants under the plan, appropriate changes will
11 need to be made to those exhibits to reflect those
12 restructuring transactions. Thank you.

13 THE COURT: Mr. Pernick?

14 MR. PERNICK: The answer is yes, Your Honor.

15 THE COURT: Okay. So, you're going to wait and send
16 me the completed corrected sets?

17 MR. PERNICK: Let me just check that. We will get
18 those changes with agreement between now and the effective
19 date, but it will not hold up the presentation of the order to
20 Your Honor.

21 THE COURT: Mr. Gray.

22 MR. GRAY: That's acceptable to us, Your Honor.

23 THE COURT: I thought there was something in one of
24 the proposed confirmation orders or findings of fact, I don't
25 recall where, that indicated that the necessary document

1 changes would be done between now and the effective date. I
2 don't know that it specifically applies to those exhibits, but
3 I think there is that paragraph.

4 MR. GRAY: That is correct, Your Honor. That
5 paragraph, I believe, is in the confirmation order. I just
6 wanted to make sure on the record that that particular change
7 would be done.

8 THE COURT: Okay. And that's sufficient, that the
9 proposed order contains that language?

10 MR. GRAY: Yes, Your Honor.

11 THE COURT: All right, thank you.

12 MR. KRESS: Your Honor, if I may, just one
13 housekeeping --

14 THE COURT: Yes, sir.

15 MR. KRESS: Andrew Kress from Kaye Scholer. We had
16 filed together with the Asbestos Claimants Committee a motion
17 to authorize the Debtors to reimburse the Trustees in the
18 efforts that they will have to take between now and the
19 effective date to set up the trust and, in particular, this
20 case more so, because of the structure of the plan which is
21 very different than any of the other trusts that have come out.

22 A CNO to that motion was filed on September 13th,
23 which is Docket Number 19213 --

24 THE COURT: 19213?

25 MR. KRESS: Yes, that is the CNO, Your Honor, the

1 motion itself is 18673.

2 THE COURT: Okay.

3 MR. KRESS: And I would just ask Your Honor's
4 indulgence if we can have that order signed as quickly as we
5 can since the trust has to get up and running, has to deliver
6 documents prior to the effective date, in connection with the
7 closing.

8 THE COURT: Okay. I will have it pulled later today
9 when I get back to court and take a look at it. As far as I
10 recall, I didn't see the CNO for that, I did see the motion,
11 but I'm not --

12 MR. KRESS: No, it's a pass through, Your Honor,
13 because whatever Owens Corning reimburses the trust for gets
14 deducted from the first payments.

15 THE COURT: I understand, except some how or other I
16 -- now that I say that, I think I did see the CNO and had
17 instructed the order to be entered, but I'll take a look, Mr.
18 Kress. I'm sorry, I just have lost track of that detail.

19 MR. KRESS: That's okay, thank you, Your Honor.

20 THE COURT: All right.

21 MR. PERNICK: Your Honor, just the last item is, if
22 there are parties on the phone that would like to see the
23 order, I'd like to ask that they let us know that, maybe within
24 the next two hours, so that we can then get them a copy of the
25 order and try to have any language that they would like

1 discussed.

2 THE COURT: Do you want me to unblock the line again
3 and you want to take a list?

4 MR. PERNICK: Sure, if they want to tell us, that'd
5 be great.

6 THE COURT: The court call operator, if you could
7 please unblock the line again.

8 MR. LOIZIDES: This is Chris Loizides for Sanford C.
9 Bernstein & Co., LLC, it's another defendant in the Debtors
10 avoidance action. I just wanted to confirm that, clarify that
11 I assume that none of these changes will affect the fact that
12 that avoidance action and all other avoidance actions will be
13 dismissed with prejudice upon confirmation, subject only to the
14 plan becoming effective. If that's correct, then I don't think
15 I need to see the revised plan.

16 MR. PERNICK: That is correct, and no changes have
17 been made since --

18 THE COURT: On confirmation. There are going to be
19 dismissed on confirmation not on the effective date.

20 MR. LOIZIDES: That's right. I just said they would
21 be dismissed on, is it consummation or confirmation?

22 THE COURT: It would be unlikely to do it on
23 confirmation until the plan goes effective.

24 MR. PERNICK: I think it's the effective date, but I
25 can check that.

1 MR. KRESS: Your Honor, I believe the plan does
2 provide that the course of action --

3 MR. PERNICK: Right.

4 THE COURT: It's on the effective date, Mr. Loizides.

5 MR. LOIZIDES: I thought it was on confirmation but
6 subject to a condition subsequent, that the plan go effective
7 which is --

8 MR. PERNICK: No, it's the effective date, but the
9 answer to the question is, nothing in this order has changed
10 that treatment in the plan. That stayed consistently the same.

11 MR. LOIZIDES: Okay, thank you.

12 THE COURT: Let me find my list again. I'm going to
13 read through the list of the participants by phone. As I call
14 your name, I'll pause so that you can indicate if you want to
15 have a copy of the documents that Mr. Pernick is going to
16 distribute with respect to the confirmation order. If you
17 don't want them, you don't need to say anything, just say yes
18 if you do want them please.

19 Stuart Kovensky, Joseph Krigsfeld, Christine Daley,
20 Sharon Zieg, Donald Workman.

21 MR. WORKMAN: Yes and I sent an e-mail to Mr. Pernick
22 and Mr. Conlan.

23 THE COURT: Thank you. Peg Brickley, Andy Chang,
24 Tracy Essig, Gordon Harriss, Naomi Decter, Lydia Chan, Jennifer
25 Lowney, John Christy, James Gibb. I see Kate Stickles in the

1 courtroom. Noel Burnham, Wei Wang, Stephen Vogel, Christine
2 Jagde.

3 MS. JAGDE: Yes, please.

4 THE COURT: Okay, thank you. John Greene, Rebecca
5 Butcher, Janet Ohnemus.

6 MS. OHNEMUS: Yes, please.

7 THE COURT: All right, thank you.

8 MR. PERNICK: Could we actually inquire how we can
9 get those documents --

10 THE COURT: Do you have an e-mail, Ms. Ohnemus?

11 MS. OHNEMUS: Yes, I do. It's -- you want me to give
12 it now?

13 THE COURT: Yes, please.

14 MS. OHNEMUS: Okay, lower case, it's
15 johnnemus99@hotmail.com.

16 THE COURT: Mr. Pernick, you want to repeat it back?

17 MR. PERNICK: Sure. johnnemus99@hotmail.com.

18 MS. OHNEMUS: That's correct.

19 THE COURT: Okay. Those documents will be sent to
20 you via e-mail, Ms. Ohnemus.

21 MS. OHNEMUS: Thank you.

22 THE COURT: Selma Windorfer, Linda Hoch, Anne Myers.

23 MS. MYERS: Yes, please.

24 THE COURT: All right. David Baldwin, John Shaffer,
25 Isaac Pachulski, William Sudell, Myron Manternach, Jennifer

1 Hoagland.

2 MS. HOAGLAND: Yes, please.

3 THE COURT: All right. Marc Casarino, Joseph
4 Gibbons.

5 MR. GIBBONS: Yes, Your Honor.

6 THE COURT: All right, thank you. Lisa Epps, Marti
7 Murray, Blake Huynh, Francis Monaco, Eitan Melamed, Sara Gooch,
8 Anna Engh, Katharine Mayer, Robert Gilbert, Douglas Gooding,
9 Alice Eaton, Teresa Currier, David Klauder.

10 MR. KLAUDER: Yes, please.

11 THE COURT: All right. Daniel Chandra, Christopher
12 Loizides, Neal Shah, Hadley Van Vactor, Domenic Pacitti, Denise
13 Wildes, Christena Lambriankos.

14 MS. LAMBRIANKOS: Yes, please.

15 THE COURT: All right. Is there anyone's name that I
16 did not call who wants a copy of the confirmation order and
17 proposed findings?

18 MR. FELSENTHAL: Judge, this is Steve Felsenthal.
19 I'll send Mr. Pernick an e-mail, I would like to see it.

20 THE COURT: Oh, thank you, Mr. Felsenthal. I
21 apologize for missing your name.

22 MR. PERNICK: Your Honor, two that I don't believe, if
23 we could have their e-mail address, I think Jennifer Hoagland,
24 I'm not sure we have that and I want to make sure we do.

25 THE COURT: Ms. Hoagland?

1 MS. HOAGLAND: Thanks, I just -- excuse me, I'll just
2 send an e-mail.

3 MR. PERNICK: Okay, perfect. And, I apologize,
4 Christina -- I can't --

5 MS. LAMBRIANAKOS: Lambrianakos. I'll send Mr.
6 Conlan an e-mail right now.

7 MR. PERNICK: Okay, thank you.

8 MS. LAMBRIANAKOS: You're welcome.

9 MR. PERNICK: And just to confirm what we will send
10 around, is a red line version of the findings of fact and
11 conclusions of law and the confirmation order, red line to the
12 Thursday night version that was filed. So, it'll show all the
13 cumulative changes since Thursday night.

14 THE COURT: All right. Are there any housekeeping
15 matters to be addressed by anyone on the phone? Okay. You can
16 mute the phone line again then, thank you. Mr. Pernick?

17 MR. PERNICK: Your Honor, from the Debtors side we
18 have nothing further, and, again we thank you very much.

19 THE COURT: Anyone else have any housekeeping matters
20 to address? Well, congratulations.

21 MR. PERNICK: Thank you, Your Honor.

22 THE COURT: We're adjourned.

23 MR. PERNICK: Thank you very much.

24

25

CERTIFICATION

I, ELAINE HOWELL, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and to the best of my ability.

/s/ Elaine Howell

Date: September 25, 2006

ELAINE HOWELL

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